

**VANDEBURGH COUNTY  
REZONING BOARD  
JANUARY 17, 2006**

The Vanderburgh County Rezoning Board met in session this 17<sup>th</sup> day of January, 2006 at 4:44 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: Call to order the Vanderburgh County Rezoning Board meeting of January 17, 2006. Can you tell us who's up first today? Do you have another agenda?

**First Reading: VC-2-2006: Petitioner: Evansville Industrial Foundation  
Address: 14636 Foundation Avenue  
Request: Change from M-2 to Ag**

Brian Williams: Madam President, Commissioners, the first item on the docket for the rezoning is docket number 2006-6-PC. I'm Brian Williams with Kahn Dees Donovan and Kahn, secretary and counsel for the Evansville Industrial Foundation. It's docket number VC-2-2006. It's a petition for first reading, although my understanding is that it was on the December calendar and that's it's been noticed for homeowners to be here today. That's my understanding. If there are any remonstrators to appear. This concerns a five and a fraction acre parcel of property that, if you will, is located on the eastside of the road at the intersection of Green River Road and Petersburg Road. If you can envision where Green River Road ends, or starts, depending upon your perspective, and Petersburg Road, this property is there. It was zoned, or it's currently zoned M-2 as part of the Vanderburgh Industrial Park. This five and a fraction acres is really facing Green River Road. It's really not part of, or can't be used as industrial property. The neighbor, the residential neighbor has approached us with regard to purchasing it. So, we are seeking to change it from M-2 zone to an agricultural zone. The Area Plan Commission, of course, approved that 7-1-1, and we are before you today for that approval on first reading, as I understand it, but, acting like a second reading because this would be the time when homeowners have been notified to appear if they have any remonstrances. There were none during the APC meeting, so, unless there are any questions, that's my presentation.

President Musgrave: Are there any remonstrators here this evening? If you would please come forward, state your name and address for the record.

Daniel McFadden: Daniel McFadden with Pro-Lift Industrial Equipment. Basically, I only had one question, and we just have a concern of exactly where the plot is, and we just don't want residential drive throughs coming in to the Industrial Park. So, that's the question that we have.

President Musgrave: Would you like to address that question?

Brian Williams: Sure.

President Musgrave: The map is on the wall of where the plot is.

Brian Williams: Yeah, Pro-Lift would be off the wall toward State Road 57, if you will, it would be approximately where the picture is, hanging on the wall, if I were to

guess. The parcel that we're discussing is where you see the white box, VC-2-2006. There will never be any drive, nor can there be any drive that would enter into the park from this parcel, or approach Foundation Drive. This is just to, as a parcel that is being sought by the next door residential neighbor, which in this map would be the lower part, or to the south.

President Musgrave: One of the question....thank you. Sir, one of the questions raised at the Area Plan Commission meeting was, what exact use was this being put to. I know that you're asking for it to be down zoned to agricultural, but as I look at that, I'm not sure what you intend to grow there.

Brian Williams: Well, I can't speak to what the purchaser might want to do with the property. It was originally agricultural, and, of course, it was upgraded to M-2. So, that's why we are seeking to down grade it to what it was before, and that is generally the use, there is some mixed use in that area, but that is generally the use in the area.

President Musgrave: You are saying the homeowner to the south is seeking to acquire this property?

Brian Williams: That is correct.

President Musgrave: And is that homeowner here tonight?

Brian Williams: No.

President Musgrave: Okay.

Commissioner Nix: So, that I understand that...I'm color blind, so, whatever that dark color is, is that all agricultural?

Brian Williams: No, the dark color, which is purple for the rest of the audience here, and I understand, Mr. Nix, is the Vanderburgh Industrial Park. That is all zoned M-2, Industrial. The bracket, the cross hatched hairs, and I don't know if they have a—

Bev Behme: Here.

Brian Williams: Right there you'll see a box, that's the five and a fraction acres. This is where Green River Road and Petersburg Road intersects. There's a stop sign there. Don't know if you're familiar with that. It's all just simply in grass now. There is a berm, an earthen berm with trees on top that runs along here to help shelter the Vanderburgh Industrial Park from the residential that is along Petersburg Road and Green River Road here. There is houses in each of these lots here. Frankly, I think there's a blank lot there, but there's also houses along here as well.

President Musgrave: What zoning does the white indicate?

Brad Mills: Agricultural.

President Musgrave: Okay. Alright, any further questions? Is there a motion?

Commissioner Shetler: So moved.

Commissioner Nix: Second.

President Musgrave: And just for clarification, that's a motion to approve the zoning?

Commissioner Shetler: Yes.

Ted C. Ziemer, Jr.: Excuse me, now you're not approving the rezoning. This is just first reading, and it will be read again next, on the 24<sup>th</sup> of January, and then you would vote finally on this.

President Musgrave: Okay, so, do we vote at this point or not?

Ted C. Ziemer, Jr.: You really don't need to vote at all. I will say that the remonstrator is perfectly free to come next week, if you wish. It's not necessary. The Commissioners have heard this today, and I don't think you even need to come next week, unless you wish to do so. There, the presentation has been made, and they will vote on it next week.

Brian Williams: Very good. Any other questions?

**Approval of November 15, 2005 Rezoning Meeting Minutes**

President Musgrave: I've been notified that we skipped the approval of the 11-15-05 Rezoning minutes. If there is a motion to that effect?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

**First Reading: VC-3-2006: Petitioner: Bramco Properties, LLC  
Address: 8200 Telephone Road  
Request: Change from Ag to C-4 with UDC**

President Musgrave: We move now to the first reading of docket 2006-7-PC VC-3-2006, Bramco Properties. That's been continued?

Brad Mills: That was continued at last meeting. It's my understanding that they were going to request a withdrawal, but they have not done that yet.

Madelyn Grayson: But, we've not had first reading yet.

President Musgrave: So, should we continue our first reading?

Brad Mills: If you would like to.

President Musgrave: Alright. So, we've had a first reading, are there any remonstrators here?

**Final Reading: VC-10-2005: Petitioner: Sebrina Martin**  
**Address: 15025 Petersburg Road**  
**Request: Ag to C-4 with UDC**  
**Action: No Action/Petition Amended 1/17/06**

President Musgrave: We move forward to the final reading, Sebrina Martin. I understand that petition has—

Brad Mills: That one has been amended. We received an amendment today in our office in Area Plan. So, that will go back to Area Plan Commission.

President Musgrave: Okay.

**Final Reading: VC-12-2005: Petitioner: Level Development LLC**  
**Address: 3340 Mariner Drive**  
**Request: R-1 to R-3 with UDC**  
**Action: Approved 3-0**

President Musgrave: We move now to 2005-43-PC VC-12-2005, Level Development LLC, 3340 Mariner Drive. Mr. Buck?

Dan Buck: My name is Dan Buck. I live at 8930 Pierce Drive. I'm proposing to rezone 24 plus acres on the northeast corner of Oak Hill and Lynch from R-1 to R-3 with a use and development commitment. That commitment is virtually the same as the subdivision across Lynch that I developed, and virtually 60 foot lots, the same as R-1. I'm asking for a 20 foot setback, instead of 25, so that I can have more backyard, and the possibility of larger homes with 40 percent lot coverage, instead of 30, which is also R-1. I think it was recommended by Area Plan.

President Musgrave: Are there any remonstrators? Mrs. Susan Harp of Oak Hill Neighborhood Association.

Susan Harp: Susan Harp, 2515 Glen Avenue, president of Oak Hill Neighborhood Association. We're here, our neighborhood association does approve of this subdivision. There were some concerns about traffic issues that were brought up at Area Plan Commission, and Mr. Buck has met at our neighborhood meeting and gone over this with neighbors who were present at that meeting. My husband is working with John Stoll on coming up with some different alternatives that we might have to go to in the future, if traffic does become more of an issue. It already is an issue, as the neighbors stated, but we're looking at some other alternatives that we might do.

President Musgrave: Mr. Buck, I understand that you are giving the county \$5,000 in order to assist in the conducting of a traffic study?

Dan Buck: Correct. If my project does go through, I'll contribute \$5,000 to a traffic study for Oak Hill and Lynch area there, yes.

President Musgrave: Okay, Mr. Mills, was there anything else that needed to be read in to the record at this time? I would like to thank you again for all the efforts that you have made to address concerns. You gave a different plat than the one that I see here. I guess, it's not ready for the screen yet. That he has extended to the

north and to the east both of those roads, so that in the future they could, if conditions warrant, ever get to that point, be connected with other roads in the area. That did change the lot layout, and added four additional lots to your development.

Dan Buck: Correct. Because there will be more streets that are within inside.

Commissioner Shetler: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: The motion carries.

Dan Buck: Thank you. I would also like to show an appreciation to the Harp's and all the great work that they do.

Brad Mills: Ted, roll call.

Ted C. Ziemer, Jr.: Yes, roll call vote.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes.

<p><b>Final Reading: VC-13-2005: Petitioner: Henry V. Goben</b> <b>Address: 13601 Highway 41 North</b> <b>Request: Change from C-4 with UDC to a CO-2</b> <b>Action: Approved 3-0</b></p>
---

President Musgrave: Docket 2005-45-PC VC-13-2005, Henry V. Goben.

Henry Goben: My wife and I purchased the property at 13601 Highway 41 North. It was zoned C-4. It reverted back to residential. We purchased it for the purpose of opening an office for insurance, and petitioned the, I guess, the Plan Commission. They approved it 7-0, I think, if I remember correctly. I'm here to seek approval.

Brad Mills: (Inaudible).

Henry Goben: Eight to nothing?

Brad Mills: Eight to one.

President Musgrave: I abstained because I don't vote at the Plan meetings, I wait to vote until I come here.

Henry Goben: I understand.

President Musgrave: Are there any remonstrators for this rezoning?  
Commissioners, do you have any questions?

Commissioner Nix: Is this off of 41? Is that shown there?

Henry Goben: There's an entrance to—

Commissioner Nix: Move approval.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: A roll call. Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes.

Henry Goben: Thank you.

President Musgrave: Thank you, sir.

**Final Reading: VC-1-2006: Bruce Biggerstaff, Sr.  
Address: 7900 Telephone Road  
Request: Change from Ag to R-1  
Action: Passed 3-0**

President Musgrave: Docket number 2006-1-PC VC-1-2006, Bruce Biggerstaff.

Les Shively: Madam President, members of the Board of Commissioners, my name is Les Shively representing the petitioners. This is a request for an R-1 zoning for a new residential project on the east side. This is one of the last available sites for this type of development in Vanderburgh County, much less the east side, which is still a hot area in this community. The principle developers will be John Elpers and Bruce Biggerstaff, who did Keystone, Carrington Meadows, Briarwood, are projects with which you are familiar. They have already filed their plat for subdivision approval and consideration at next month's meeting of the Area Plan Commission. I believe this received eight affirmative votes and one abstention at the Plan Commission meeting. I would be more than happy to answer any questions that you have at this time. Mr. Elpers and Mr. Biggerstaff are both present, as well as the landowners and their counsel are here as well.

President Musgrave: Are there any remonstrators? I see no remonstrators. Are there any questions from the Commissioners? Is there a motion?

Commissioner Nix: Motion to approve.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes.

Les Shively: Thank you very much.

President Musgrave: Thank you. Does that conclude the agenda? Thank you. I will entertain a motion to adjourn.

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: We are adjourned.

(The meeting was adjourned at 4:55 p.m.)

**Those in Attendance:**

Cheryl Musgrave  
Ted C. Ziemer, Jr.  
Brian Williams  
Susan Harp  
Others Unidentified

Bill Nix  
Brad Mills  
Daniel McFadden  
Henry Goben  
Members of Media

Tom Shetler, Jr.  
Madelyn Grayson  
Dan Buck  
Les Shively

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl A.W. Musgrave, President**

---

**Bill Nix, Vice President**

---

**Tom Shetler, Jr., Member**

Recorded and transcribed by Madelyn Grayson.



**VANDERBURGH COUNTY  
REZONING BOARD  
FEBRUARY 21, 2006**

The Vanderburgh County Rezoning Board met in session this 21<sup>st</sup> day of February, 2006 at 4:23 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**First Readings:**

**VC-4-2006: Petitioner: Mark Simmons  
Address: 12335 N. Green River Road  
Request: Change from C-4 to R-1**

**VC-5-2006: Petitioner: Sunset Evansville, LLC  
Address: 1800 St. George Road  
Request: Change from Ag to C-2 with UDC**

**VC-6-2005: Petitioner: Mannon L. Walters, Inc.  
Address: 6015 B. Heckel Road  
Request: Change from Ag to CO-2**

**VC-7-2006: Petitioner: Herman & Kittle Properties, Inc.  
Address: 2810 Mesker Park Drive  
Request: Change from R-1 to C-4**

**VC-8-2006: Petitioner: Jack Tubbs II-Mystic Creek LLC  
Address: 3030 N. Green River Road  
Request: Change from Ag to PUD**

President Musgrave: First readings. We have a number of items on our first readings. If Area Plan would give me a hand here with this, it's been a while since I've done these.

Bev Behme: Okay.

President Musgrave: Do we just accept them all as first reading?

Bev Behme: Yes, just read them and send them on to Plan Commission, and then they'll come back to you.

President Musgrave: Do you need the whole docket number?

Bev Behme: Just the docket number and the address, I think, is sufficient.

President Musgrave: Okay. So, I will read in to the record the docket numbers of the first readings and if we could have a motion to approve. Docket number 2006-9-PC, 12335 N. Green River Road; docket number 2006-10-PC, 1800 St. George Road; docket number 2006-11-PC, 6015 B. Heckel Road; docket number 2006-12-PC, 2810 Mesker Park Drive; docket number 2006-13-PC, 3030 North Green River Road. Motion to approve?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

**Final Reading**  
**VC-10-2005: Petitioner: Sebrina Martin**  
**Address: 15025 Petersburg Road**  
**Request: Change from Ag to C-4 with UDC**  
**Action: Approved 3-0**

President Musgrave: Here for final reading on one petition tonight, docket number 2005-31-PC, petitioner Sebrina Martin represented by counsel Krista Lockyear.

Krista Lockyear: Good afternoon, Madam President, Commissioners, my name is Krista Lockyear here on behalf of Sebrina Martin and her husband, Mike Martin, who are seeking the rezoning of a small portion of their real estate in order to enable them to store equipment that is utilized in Mike's lawn care and lawn maintenance business. We've done quite a bit of work before we got to this step. We had an original use and development commitment that we have amended in order to address some concerns that the Planning Commission raised. We have also had numerous discussions and meetings with the neighbor immediately abutting the property, Mr. Jeff Cater and his wife, Amy, and we have reached an agreement with them whereby my clients will install a fence under some pretty strict parameters to separate the properties so that there is no disruption of the residence that is adjacent to our clients real estate. Clearly this use, if you can see the zoning exhibit that's up here, is surrounded by quite a bit of industrial zoning. This use, therefore, is not inconsistent with the area. We have done what we can to mitigate any impact that it would have on the neighbors and actually have the agreement of the neighbors. We had submitted to Plan Commission a petition of many of the neighbors in the area that are in favor of this rezoning. My clients have proved to be good neighbors to most of the folks out there. I believe assisted in shoveling the roads when they had some trouble with snow out there, and, as you can see, with the industrial areas surrounding this and the agreement of the rest of the neighbors, we would ask for your support for this rezoning. I would be happy to answer any questions, and my clients are here as well.

President Musgrave: Are there any remonstrators? Are there any questions from the Commissioners? I see none.

Krista Lockyear: Actually, one of the neighbors, Mr. Hedrick, would like to make a couple comments for you, if you wouldn't mind.

President Musgrave: Certainly. If you would just state your name and address for the record.

Phil Hedrick: Yes, I'm Phillip Hedrick.

President Musgrave: Wait until you get to the microphone.

Phil Hedrick: Yeah, I'm Phil Hedrick. I live at 15130 Old Petersburg Road. I'm just catty corner from where Mike lives. I would like to say that with what Mike is doing, he's a good neighbor, and he's an asset to our community. As the lawyer referred to the snow removal, last year in our major snow storm that we had, in years prior, the last ten years, we've been snowed in out there. Our road stayed open because Mike was our neighbor out there. With his snow removal equipment as he went in

and out to change crews and stuff, they helped keep the road open. It was our farming neighbor that has the big four wheel drive farm tractor that come through and busted the road open two lanes wide so that we could continue on having access out there. Where in years past it's been closed. So, Mike's been an asset to us. I feel strongly enough about this that I've been up since 2:30 this morning, I apologize for my work, I just off work and come straight here. Mike is not just a good neighbor in that part, but also in his foster care in caring for children. He's brought back laughter in the neighborhood. There's times I go out of the house and I hear the kids down on his bouncer jumping up and down laughing, that makes the neighborhood more fun. Mike has done a lot for the neighborhood. The house that he took over was quite run down, he's fixed it up a whole lot. I will say that the big industrial park out there, I was one of the ones that fought that. I said, no, it's bad for our community. Well, I want to go on record saying, I was wrong. I bought a house ten years ago worth \$50,000, it's now worth \$117,000. My property values have gone up, not down, because of the industrial development we've had out there. So, you're not going to hurt our community. He's an asset to us. I would like to see Mike be able to stay there and keep his family there, keep his business there, and still be the good neighbor he is. I hear he's been paying some taxes too, and that's important. Thank you.

Commissioner Nix: Commissioner Musgrave likes that.

President Musgrave: Yeah.

Commissioner Nix: We all do really.

President Musgrave: Is there any discussion? Or is there a motion to approve?

Commissioner Shetler: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: Anything further.

Commissioner Nix: Do we need a roll call vote?

Krista Lockyear: Thank you very much.

Madelyn Grayson: That requires a roll call vote.

Ted C. Ziemer, Jr.: Yeah, roll call.

President Musgrave: A roll call vote. Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes.

<b>Approval of January 17, 2006 Rezoning Meeting Minutes</b>
--

President Musgrave: We need to approve the rezoning minutes, and I don't have a date on those. What date were those minutes of the last meeting?

Madelyn Grayson: January 17<sup>th</sup>.

President Musgrave: January 17<sup>th</sup>, is there a motion?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries. Is there a motion to adjourn.

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

(The meeting was adjourned at 4:29 p.m.)

**Those in Attendance:**

Cheryl Musgrave  
Ted C. Ziemer, Jr.  
Krista Lockyear  
Members of Media

Bill Nix  
Bev Behme  
Phil Hedrick

Tom Shetler, Jr.  
Madelyn Grayson  
Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl A. W. Musgrave, President**

---

**Bill Nix, Vice President**

---

**Tom Shetler, Jr., Member**

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY  
REZONING BOARD  
MARCH 21, 2006**

The Vanderburgh County Rezoning Board met in session this 21<sup>st</sup> day of March, 2006 at 4:30 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: Alright, let's call to order the rezoning portion of today's meeting.

**Approval of the February 21, 2006 Rezoning Meeting Minutes**

President Musgrave: We need to approve the rezoning minutes. What date was that, Ms. Behme, of the last rezoning hearing?

Madelyn Grayson: It was February 21<sup>st</sup>.

President Musgrave: February 21<sup>st</sup>, is there a motion?

Commissioner Shetler: So moved.

President Musgrave: I'll second. All those in favor? Aye.

Commissioner Shetler: Aye.

**First Readings:**

**VC-9-2006: Petitioner: Porterfield Development LLC  
Address: 8200 Telephone Road  
Request: Change from AG and R-1 to R-3**

**VC-10-2006: Petitioner: Mayse Farm Market LLC  
Address: 6638 N. St. Joseph Avenue  
Request: Change from AG to C-2 with UDC**

**VC-11-2006: Petitioner: Mike Elpers and Scott Straub  
Address: 5300 Woodhaven Drive  
Request: Change from AG and R-1 to C-4**

**VC-12-2006: Petitioner: Hugh Hazelwood  
Address: 8100 Pollack Avenue  
Request: Change from R-1 to C-4 with UDC**

President Musgrave: We have the first readings tonight. I will read the docket number and the address, and we will make a motion, and then approve that. Then we will go into our final reading on our one petition today. Docket number 2006-17-PC, VC-9-2006, 8200 Telephone Road; docket number 2006-18-PC, VC-10-2006, 6638 North St. Joseph Avenue; docket number 2006-21-PC, VC-11-2006, 5300 Woodhaven Drive; docket number 2006-22-PC, VC-12-2006, 8100 Pollack Avenue, first reading. Is there a motion?

Commissioner Shetler: So moved.

President Musgrave: I'll second. All those in favor? Aye.

Commissioner Shetler: Aye.

**Final Reading: VC-4-2006: Petitioner: Mark Simmons  
Address: 12335 North Green River Road  
Request: Change from C-4 to R-1  
Action: Approved 2-0**

President Musgrave: We move now to the final reading of docket number 2006-9-PC, VC-4-2006, 12335 North Green River Road. The petitioner is Mark Simmons. It is a petition to change from a C-4 zone to an R-1 zone. Is there anyone to speak to this petition. State your name and address please.

Angie Onder: I'm not Mark Simmons. Angie Onder, 3444 Woodview Drive, Newburgh, Indiana. I'm here on behalf of Mark Simmons, who is a resident in California. Essentially, he's asking for the down zoning to sell the property, because it is currently residential usage. So, in order for the home buyer to receive a loan for a residential mortgage.

President Musgrave: Are you the buyer?

Angie Onder: No, I'm not. Just a good friend.

President Musgrave: And you're a friend, not an attorney or power of attorney?

Angie Onder: No.

President Musgrave: Just here to explain the nature of the case. He's trying to sell this piece of property?

Angie Onder: Yeah.

President Musgrave: Which it has been discovered is not zoned to the usage?

Angie Onder: Correct.

President Musgrave: Before you can get financing, you must correct that situation.

Angie Onder: Yeah. Actually, he has a home buyer. The Bank of Evansville is writing the mortgage.

President Musgrave: Okay.

Angie Onder: That's why this is happening.

President Musgrave: Is there anyone here to remonstrate against this petition? I see no one. Do you have anything further to say?

Angie Onder: No, pretty good here, I think.

President Musgrave: Alright, is there a motion?

Commissioner Shetler: Motion for approval.

President Musgrave: I will second. All those in favor? Aye.

Commissioner Shetler: Aye.

President Musgrave: The motion carries.

Angie Onder: Thank you.

President Musgrave: Thank you, Ma'am.

Madelyn Grayson: That does require a roll call vote.

President Musgrave: I will do a roll call. Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And Commissioner Musgrave also votes yes.

Angie Onder: Thank you.

President Musgrave: That concludes the rezoning portion of our hearing. We will move now to Drainage Board.

(The meeting was adjourned at 4:32 p.m.)

**Those in Attendance:**

Cheryl Musgrave  
Kathryn Schymik  
Others Unidentified

Tom Shetler, Jr.  
Madelyn Grayson  
Members of Media

Bev Behme  
Angie Onder

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl A.W. Musgrave, President**

---

**Tom Shetler, Jr., Member**

Recorded and transcribed by Madelyn Grayson.



**VANDEBURGH COUNTY  
REZONING BOARD  
APRIL 18, 2006**

The Vanderburgh County Rezoning Board met in session this 18<sup>th</sup> day of April, 2006 at 4:20 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: I'm calling to order the Rezoning portion of the Commission meeting. Do we reconvene the Commission meeting? What do we do?

**Approval of March 21, 2006 Rezoning Meeting Minutes**

President Musgrave: Is there a motion to approve the minutes of the last meeting, which was what date? Do you recall?

Madelyn Grayson: March 21<sup>st</sup>.

President Musgrave: March 21<sup>st</sup>.

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

**Final Readings: VC-5-2006: Petitioner: Sunset Evansville LLC  
Address: 1800 St. George Road  
Request: Change from AG to C-2 with UDC  
Action: Approved 3-0**

President Musgrave: We have three on the docket for final reading tonight. Sunset Evansville LLC.

Matt Lutz: Good evening. My name is Matt Lutz with the law firm of Shively and Associates, representing the petitioner Sunset Evansville. With me I have Mr. Ellenstein and Mr. Nelke representing Sunset. Has everyone seen the staff field report? I'm assuming, the only thing I will point out with regards to that is clear and comprehensive, the last paragraph the updated information dated March 30<sup>th</sup> appears to indicate the petition to be from agricultural to C-4, when everything else, the ordinance and the use and development commitment all indicates C-2, which is correct. Other than that, we're here to entertain these questions you may have this evening, and to request approval.

Commissioner Shetler: So moved.

President Musgrave: I'll second, unless you want to?

Commissioner Nix: No, go ahead.

Ted C. Ziemer, Jr.: Remonstrators?

President Musgrave: Are there any remonstrators?

Matt Lutz: I don't believe we have any remonstrators.

President Musgrave: There weren't any the other night. Why don't you go ahead and second.

Commissioner Nix: I will second that.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: That concludes—

Ted C. Ziemer, Jr.: Roll call.

President Musgrave: Roll call vote. Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes.

Matt Lutz: Thank you.

President Musgrave: Good luck with your expanded parking lot, which is why I understand you brought this back.

Matt Lutz: Yes. Thank you.

**Final Reading: VC-7-2006: Petitioner: Herman & Kittle Properties, Inc.**  
**Address: 2810 Mesker Park Drive**  
**Request: Change from R-1 to C-4**  
**Action: Approved 3-0**

President Musgrave: Herman and Kittle Properties, for 2810 Mesker Park Drive?

Erika Scott: Good afternoon. My name is Erika Scott, and I am with Herman and Kittle Properties out of Indianapolis, Indiana. We are here today to request that a small parcel located at 2810 Mesker Park Drive, it's .17 acres, be rezoned. It's the yellow shaded area up on the screen, from an R-1 classification to a C-4. We are also purchasing the property that's outlined in purple, so this property fits nicely as kind of our last piece of the puzzle. The purple piece is already zoned appropriate for the development that we want to do. Just to kind of give you a little background, we are looking to do a self-storage development on this site. We develop, construct, and also do long term management of our properties. I'll be happy to answer any questions you may have.

President Musgrave: Did you bring any of those pictures?

Erika Scott: I did.

President Musgrave: Because I don't believe the Commissioners have had the opportunity to look at those.

Erika Scott: What you have before you are, is kind of a company resume. It talks about our owners and senior management staff. We also do multi-family developments. We have a new property that's actually going in in nearby Newburgh. There's also, toward the back of the photographs, are two self-storage facilities that we have in the Indianapolis area; one in Carmel, and the other one in Nora. We try to do kind of a class A facility that has plenty of security, climate controlled facilities, on-site management, and that type of thing.

President Musgrave: You said at the Area Plan meeting that it won't look exactly like this, but it will be similar?

Erika Scott: No, we hope that it will be similar. As far as the masonry, most likely it will not, just because this market in this area wouldn't bring in the revenue to bring it in. That, and both of those facilities are what we would consider a fortress style, where the buildings go all the way around the perimeter. With the slope of this particular parcel, most likely that will not be possible, so we can make sure that we have enough area for water retention.

President Musgrave: Okay. Commissioners, do you have any questions?

Commissioner Nix: I'm just curious. Your entrance would be off of?

Erika Scott: It would be off of Mesker Park Drive.

Commissioner Nix: Mesker Park, okay. How far back?

Erika Scott: You know, we will be working through the site design.

Commissioner Nix: Okay, I mean, I understand that, but you right now don't have an idea as far as that's concerned?

Erika Scott: Probably where the current location is.

Commissioner Nix: Okay.

Erika Scott: Where the 2820 parcel, it will be about that area.

President Musgrave: Okay.

Erika Scott: So, yeah, plenty of, we want to be able to get people north enough off of the highway before they turn in.

Commissioner Nix: Move approval.

Commissioner Shetler: Second.

Commissioner Nix: I'm sorry.

President Musgrave: I want to call for remonstrators.

Commissioner Nix: I'm sorry.

President Musgrave: Are there any remonstrators?

Commissioner Nix: We're a little out of tune tonight.

President Musgrave: There are not. You have a motion to approve?

Commissioner Nix: Yes.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: The motion carries. Roll call. Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes.

Erika Scott: Okay, thank you.

President Musgrave: We look forward to seeing this project take shape.

**Final Reading: VC-8-2006: Petitioner: Jack Tubbs, II: Mystic Creek  
Address: 3030 North Green River Road  
Request: Change from AG and C-4 to PUD (Planned Unit Development)  
Action: Approved 3-0**

President Musgrave: Jack Tubbs, Mystic Creek.

Justin Shofstall: Good afternoon. I'm Justin Shofstall with Easley Engineering. Mystic Bridge PUD that is before you is for a 20 lot duplex building per lot development. Each unit is estimated to be about starting right around \$150,000 range per unit. I would like to remind the Commissioners that the street and drainage plans and all of the waivers for sidewalks was seen before the Commissioners and approved on March 7<sup>th</sup> of this year. If there's any other additional questions, I would be happy to answer those.

President Musgrave: Are there any remonstrators? Is there a motion?

Commissioner Nix: Motion to approve.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes.

Justin Shofstall: Thank you.

President Musgrave: Thank you, sir. Is there any other business to come before the Commissioners on the rezoning? I see none. Is there a motion to adjourn?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

(The meeting was adjourned at 4:28 p.m.)

**Those in Attendance:**

Cheryl Musgrave

Ted C. Ziemer, Jr.

Erika Scott

Members of Media

Bill Nix

Madelyn Grayson

Justin Shofstall

Tom Shetler, Jr.

Matt Lutz

Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl A.W. Musgrave, President**

---

**Bill Nix, Vice President**

---

**Tom Shetler, Jr., Member**

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY  
REZONING BOARD  
MAY 16, 2006**

The Vanderburgh County Rezoning Board met in session this 16<sup>th</sup> day of May, 2006 at 4:30 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: Call to order the Rezoning portion of the Commission agenda. I have today in front of me Bev Behme who will begin the meeting.

**Approval of the April 18, 2006 Rezoning Meeting Minutes**

Bev Behme: Good afternoon, Commissioners. I think the first item is to approve the Rezoning minutes of April 18, 2006.

President Musgrave: Do I hear a motion?

Commissioner Shetler: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

Bev Behme: We have no first readings. So, we'll go directly to the final readings.

**Final Readings: VC-9-2006: Petitioner: Porterfield Development, LLC  
Address: 8200 Telephone Road  
Request: Change from AG and R-1 to R-3  
Action: Approved 3-0**

Bev Behme: I have a brief overview. If it be your pleasure, I would be glad to read that.

President Musgrave: Go ahead.

Bev Behme: The first zoning is VC-9-2006, 8200 Telephone Road. Porterfield Development is requesting to rezone the property located at 8200 Telephone Road from agricultural and R-1 to R-3. This is a 38.5 acre site on the north side of Telephone Road, adjacent west of the Warrick County line. This is a petition to rezone a part of Centerra Ridge Subdivision site, a proposed 211 lot residential subdivision on 77.8 acres. Centerra Ridge was approved by the Area Plan Commission at their meeting on April 14, 2006. A part of the proposed Centerra Ridge was rezoned from agricultural to R-1 by the County Commissioners on January 17, 2006. A portion of the R-1 site and an additional agriculturally zoned acreage is included in this request to rezone to R-3. The R-3 zoning classification allows 50 foot wide lots, allows 40 percent lot coverage, and minimum 20 foot rear and front yard set backs. R-1 and agricultural districts require a minimum of 60 foot wide lots, allow 30 percent lot coverage, and a minimum of 25 foot front and rear.

This area is designated on the future land use map of the comprehensive plan as an area of residential development. This change in zoning to R-3 for this 38.5 acre site is consistent with the comprehensive plan. On May 11, 2006, Area Plan, by unanimous vote, recommended approval. I believe Mr. Shively is here representing Porterfield Development.

President Musgrave: Mr. Shively, would you like to make a presentation?

Les Shively: For the record, my name is Les Shively, representing Porterfield Development. I really don't have anything to add to the staff field report, only to indicate that if you will recall, this property was proposed to be zoned commercial. We worked something out with the owners, and we came before you to get a little leeway to come back in less than 12 months. Let's just say this will be appropriate buffering between the, over in Warrick County there's some industrial uses, not right at the line, but close to it, and then we have the residential subdivision to the west, multi-family in the middle would be appropriate buffering and sort of a step up or step down, depending on which direction you're going. So, we think it fits with our overall plan very well.

President Musgrave: Are there any remonstrators? I see none. Are there any questions from the Commissioners? Is there a motion?

Commissioner Shetler: So moved.

Commissioner Nix: Second.

President Musgrave: Your motion is for approval?

Commissioner Shetler: Yes.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: The motion carries.

Les Shively: Thank you very much.

President Musgrave: Thank you.

Commissioner Nix: Thank you, Mr. Shively.

Madelyn Grayson: That's an ordinance, it needs a roll call vote.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes.

**Final Reading: VC-10-2006: Mayse Farm Market, LLC**  
**Address: 6638 N. St. Joseph Avenue**  
**Request: Change from AG to C-2 with UDC**  
**Action: Approved 3-0**

Bev Behme: The second item on the agenda is VC-10-2006, 6638 North St. Joseph Avenue. Mayse Farm Market is requesting to rezone a 1.9 acre part of their approximately 54 acre farm located at 6638 North St. Joseph Avenue, from agricultural to C-2 with a use and development commitment. This is a request to rezone to allow the re-establishment of Mayse Farm Market on this site. The Mayse market was destroyed by fire in December of 2005. Site review addressed compliance with all code requirements on March 20<sup>th</sup>, when plans were submitted for the reconstruction of the farm market on the site. The Mayse's have filed a petition for a variance to allow maintenance of the existing gravel drives and parking. The variance is scheduled to be heard by the Board of Zoning Appeals at their meeting on Thursday, May 18, 2006. Mayse Farm Market has obtained an improvement location permit to allow construction of a new 4,400 square foot market on the 1.9 acre site. The new market is limited to sales of on-site products and produce, only until the rezoning of the site to C-2 is approved. Commercial zoning is required to accommodate any additional use on the site. A use and development commitment is included with this zoning request, which eliminates many commercial uses typically allowed in this C-2 classification, allowing 18 uses identified by the applicant as possible future commercial activity on this site. The comprehensive plan, future land use maps designates this area as agricultural, and this is a request to allow change in zoning to C-2 with a use and development commitment for the 1.9 acre part of the Mayse Farm operation for the Mayse Farm Market. May 11, 2006, Area Plan Commission, by unanimous vote recommended approval. I believe Mr. Bohleber is here representing Mayse Market.

President Musgrave: Mr. Bohleber?

Steve Bohleber: Thank you, and good afternoon, Commissioners. I am Steve Bohleber, an attorney representing Paul and Sherrill Mayse, who are with me in the audience today and here to answer any of your questions. I have little to add to Ms. Behme's report, maybe a little additional clarification for historic purposes. The Mayse's have been at this site, doing what they've always done, since 1977. In fact, the family has owned this property for generations. But, since '77, they've operated Mayse Farm Market, and, I think, many people, if not all in the community, have been aware of it's existence. The unfortunate fire on December 17<sup>th</sup> put them out of business for awhile. In order to re-establish that business, because of changing laws and passage of time, they have been required to rezone the property now and seek a variance. They're doing nothing more, when they re-open, than they were doing before, it's just they now have to rezone it, because of the current situation. The use and development commitment was attempted, it attempts to fit their particular business needs and exclude everything else. It simply covers what they have been doing, and logically what they might include in the future, because they do sell some products that are not grown on site, but they're all farm related, agricultural food type products. As Ms. Behme pointed out, this has already gone to site review, it's been approved. It comes with a unanimous do pass recommendation from the Plan Commission. The support of the West Side Improvement Association was articulated at the last meeting, although not on the record. Mr. Padget is happy to see them re-open, as are everyone else. So, we do



ask the Commission to adopt this ordinance and allow the Mayse's to re-open in their former and future glory. They're here to answer any questions. Thank you.

President Musgrave: Are there any remonstrators? Mr. Padget?

Fred Padget: I'm Fred Padget, and I'm here representing West Side Improvement Association. We did not testify at the Area Planning Commission. Mr. Bohleber, the attorney, told me that he had it under control, and, as usual, he did. So, we didn't feel it necessary to testify, but I did want to take a minute just to tell you, and express to the Mayse's, and go on record as saying we know they've been there quite a while, they're a long time asset to the area. In fact, they've become somewhat of a landmark, and what we want to go on record as saying is should you Commissioners decide to approve this rezoning, we just wanted to wish them a long and successful future there. Thank you.

Commissioner Nix: Thank you, Mr. Padget.

President Musgrave: Are there any other remonstrators? I see none. Are there any questions from the Commissioners?

Commissioner Nix: Move approval.

Commissioner Shetler: I'll second. It sounds to me as if a vote against this is a vote against Silver Queen car in the 1950's. You can't hardly do that.

Steve Bohleber: Apple pie too.

Commissioner Shetler: Yeah.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: A roll call vote is necessary. Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes. I'll be voting with my feet as well, because I am a customer of yours too.

Commissioner Nix: Yeah, I am too.

President Musgrave: I'll see you at the store when it gets built. Good luck with your—

Steve Bohleber: Well, I went out to look around on Sunday, and they gave me some tomatoes too.

President Musgrave: We'll all be out if that's what we get for coming to see.

Commissioner Shetler: You didn't call me.

Commissioner Nix: Please hurry and get that open.

President Musgrave: Are there any other rezoning matters to be brought before the board? Thank you, Ms. Behme, for the new format. I believe that this is quite informative, and went very smooth. Motion to adjourn?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

(The meeting was adjourned at 4:40 p.m.)

**Those in Attendance:**

Cheryl Musgrave

Ted C. Ziemer, Jr.

Les Shively

Members of Media

Bill Nix

Bev Behme

Steve Bohleber

Tom Shetler, Jr.

Madelyn Grayson

Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl Musgrave, President**

---

**Bill Nix, Vice President**

---

**Tom Shetler, Jr., Member**

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY  
REZONING BOARD  
JULY 18, 2006**

The Vanderburgh County Rezoning Board met in session this 18<sup>th</sup> day of July, 2006 at 4:35 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: Call to order the Vanderburgh County Rezoning Board meeting of July 18, 2006.

**Approval of the May 16, 2006 Rezoning Meeting Minutes**

President Musgrave: Do we have minutes to approve?

Bev Behme: Right. Do you want me to do what I did last time?

President Musgrave: Would you please?

Bev Behme: Okay, yes. Beverly Behme, Area Plan Commission. We need a vote to approve Rezoning minutes from the May 16, 2006 meeting.

President Musgrave: Is there a motion?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

**VC-11-2006: Petitioner: Mike Elpers & Scott Straub  
Address: 5300 Woodhaven Drive  
Request: Change from AG and R-1 to C-4  
Action: Withdrawn**

Bev Behme: We have two items on the agenda. VC-11-2006, 5300 Woodhaven Drive was a change from agricultural and R-1 to C-4, that petition has been withdrawn.

**Final Reading: VC-12-2006: Petitioner: Hugh Hazlewood  
Address: 8100 Pollack Avenue  
Request: Change from R-1 to C-4 with UDC  
Action: Sent back to Area Plan Commission**

Bev Behme: We have one final hearing tonight. That's docket VC-12-2006, Hugh Hazlewood, 8100 Pollack Avenue. Mr. Hazelwood is requesting to change the zoning of a portion of his property, located at 8100 Pollack Avenue, from R-1 to C-4 with a use and development commitment. This is a 2.2 acre site located on the north side of Pollack Avenue, just west of Indian Mounds Boulevard. The use and development commitment prohibits use of the site as a package liquor store, and

prohibits adult special uses on this site. This petition was continued from last month's meeting, at Mr. Hazlewood's request. He has filed an amended use and development commitment and a new site plan, which is part of this petition to rezone. The amended document now includes a statement that no trailer, tractor trailers will be allowed on the premises. Mr. Hazlewood has also submitted new pictures, that have been made part of the record, which demonstrates that he has erected new informational signage on his building which indicates, "No Semi Trailers". I have copies of those for you. Pollack Avenue at this location has no curbs or sidewalks, and the property is currently graveled to the street. Future commercial use of the site will require review and compliance with site review committee recommendations. County Engineer, John Stoll, and Evansville MPO have both raised concerns regarding the use of this small site for any use that might require semi truck traffic. The site on Pollack Avenue was a former location of Knight Township Fire House number seven. The original block garage on this site was built in the mid 1930's and was certified as a legal non-conforming commercial, neighborhood retail use by the Area Plan Commission in 1982. In December of 1989 the fire house was established on this site by approval of a special use permit by the Board of Zoning Appeals. The legal non-conforming commercial classification was abandoned by the owner of the site upon conversion to the public building use, the fire station. Two additions were made to the fire station during their occupancy of the site. This is a request to rezone the vacant site to C-4 with a use and development commitment to allow re-establishment of commercial use on the site. The comprehensive plan future land use map designates this area as residential and undeveloped. Surrounding area is completely agricultural and residential. Area Plan Commission on July 13, 2006 voted to recommend to the Commissioners to deny the petition. There were ten negative votes and two abstentions. Mr. Johnson and Mr. Hazlewood are here to present the petition.

President Musgrave: Is there something wrong with the projector?

Bev Behme: Oh, it's pink.

Commissioner Nix: That's purple?

Unidentified: It's not purple on my screen.

President Musgrave: Well, it's very purple on that screen. Maybe your light bulb is burning out.

Bev Behme: Did you want this?

Edward Johnson: Yes, thank you very much. Good afternoon. I'm Edward Johnson, and I represent Hugh Hazlewood, who's here to my left, who owns the property. He also owns the property just to the east of this property. If you'll look over there, there's a house right there on the corner, that's where Hugh lives. He owns that property, and he lives there. He's lived there for 18 years. He owns the property also, right next door, that's subject to this rezoning into a C-4. We just, I don't want to repeat what Beverly said about the history, but there are just a couple of things that I want you to know that I think are important. Number one, this property has been commercial, or a fire station, which certainly isn't residential, since the mid 30's. It was used as a neighborhood store, like a convenience store, except we didn't call them that back then, a country general store, another kind of commercial store, it was a bicycle repair shop for awhile, and an auction barn for awhile. Then, so, it's had a history. This isn't a piece of residential property. It might be zoned R-

1, but this is not residential property that we're here to ask to have a C-4 zoning for and a commercial use. This, make no mistake about it, this is and has been commercial property. I know you've all seen it, but I would step forward just to show you again what this property looks like. If I could go ahead and pass it around.

President Musgrave: Okay.

Edward Johnson: That's fine. We wouldn't be here today, we would still have a tenant, Knight Township Fire Department Hose House Number Seven would still be our tenant, and we wouldn't be standing before you but for the November 6<sup>th</sup> tornado. When that tornado came through, it tore off the roof of the fire station, did major damage to the roof. Hugh went out and got it replaced, made the repairs, but in the process, Knight Township decided they couldn't wait. They couldn't leave their fire trucks there and get rained on, and they couldn't operate it with the roof in the condition that it was. So, they left. That was their prerogative. They have another fire station that they are going to, or are in, and that's their business. But, they would be with us today, as our tenants, and we wouldn't be here before you, except for the tornado. So, now we are here, and now we're faced with the situation in which we have a commercial building on a small piece of property which we've had commercial use for a long time. We're asking permission to do C-4 so that we can lease the property to B-Dry. B-Dry is a well known name in Evansville. They've been in the basement waterproofing business forever. They've been here for a long, long time. They have an excellent reputation. But, more importantly than their reputation and how long they've been here, is what they plan to do with the property. It's like, if you had to pick a commercial use, you could not pick one less intrusive than B-Dry. They have six employees. They have two dump trucks. The two dump trucks are going to go in the bay at night. They are not going to be visible for people going down Pollack Avenue. They are out in the day servicing customers. When they're not servicing customers, they're going to be kept in the bay, with the bay doors shut. The, so, of the six employees, four of them will be on the dump truck, two of them sell. They go out and make bids on jobs, on basement jobs primarily. There is no walk up traffic. You don't drive to a B-Dry building and walk in. You call them and they come to your house so they can see your basement and see what your problem is. So, they're not going to be there during the day. There's plenty of parking for the six people who will drive their automobiles there for the day, and with no walk up parking, it's, as I say, it's like a dream come true. It's an opportunity for Hugh to be able to use this building, obtain some form of rent off of the building, and have somebody there to take care of it, so we don't drive down Pollack and see a...if you look, go down there now, some vandals have been in the Coke machine. It's turned upside down. So, that we don't have an empty piece of property, it's a perfect opportunity. We asked for that reason to have that C-4 zoning. Now, I know the neighbors will tell you, or at least one of the neighbors who's here will tell you why it might be the kind of zoning where it's C-4 today, there will be another one and another one and another one. No way. It's Pollack Avenue. It is basically a residential neighborhood. No question about that. But, this particular piece of...for whatever reason, it's the only one out there, has been commercial since 1934, or a fire station, which certainly isn't residential. So, and close to commercial in use. The uses that have been there certainly were traffic generating. You have a bicycle repair shop, or an auction barn, you have people driving in. With B-Dry there isn't going to be anybody driving in. So, it's not going to be creeping commercialism, because there aren't any other lots out there like this. We bought the property, we didn't start it commercial, we bought this property about 18 years ago, and then did the, we thought were doing the community a favor by leasing it to Knight Township Fire Department, so they would have a fire station out there, let them build and construct

that bigger of the two bays. So, we feel like the history supports it, the use has got to support what we're asking for. Now, I know Mr. Roberts and some other people are here from Angel Mounds. Mr. Roberts will tell you, "Well, we're concerned that having commercial ventures near the entrance to Angel Mounds." Let me say this, first of all, we wouldn't want to do anything adverse to Angel Mounds, a real community asset. Absolutely, no doubt about it. We're a quarter of a mile away from the entrance. You can't see us from inside Angel Mounds. You could if all the vegetation were taken down, but if you drive out Pollack, as you go toward Warrick County, you go eastbound and our property is there on the left hand side...the right hand side, like right across the street is Angel Mounds property, but the trees and the shrubs are so high, there's no way. You can go over there and stand, there's no way you can see it. You can stand on our property, all you can see is the vegetation across the street. So, it isn't going to affect Angel Mounds in any way, shape, or form. The idea that we shouldn't have commercial near a beautiful, outdoor type park like Angel Mounds, there's nothing we can do with that with the building that's there and has been there. We can't put a Disney World on there, or a roller coaster or a Ferris wheel, or any other kind of commercial. It's too small. Can't do that. What you see is what you get. The other thing that occurred to me as I drove home from the Plan Commission, Angel Mounds has been there since the Indians were there. It's been a park for a long time. That commercial use was there in the '30's and in the '40's and in the '50's and in the '60's and the '70's and in the '80's, up to 1989 and nobody ever said, "Well, we can't go to Angel Mounds because there's a commercial establishment at 8100 Pollack Avenue." It didn't have an adverse effect on Angel Mounds then, and it won't have now. Hugh, you will say, "Well, how come you want to lease it to B-Dry? What if B-Dry leaves and you have a C-4 use? How do we know that that C-4 is going to be compatible?" Well, several reasons. Number one, it's too small to have much of a commercial use. That's why we were so lucky to get B-Dry to come in and offer to lease this property from us. This was going to be a difficult property to lease, it's so small. Secondly, and the second reason that you know that this property is going to be compatible, Hugh lives right next door. He is not going to let that property be used in a manner that is going to depreciate his house. You think the neighbors are worried, that's his home right there. Hugh's put his whole life, the last 18 years, in it. He's put his money in it. He can't afford to let that house have something detrimental next door to it. That's another reason that we know that the use is going to be a very credible use in the neighborhood. At the Plan Commission somebody said, "Well, but you could zone to R-1, you don't have to use it for a fire station or the B-Dry, we can use it as, rehab it as a single family. You can put a single family." Well, it doesn't look very single family to me, but there's a more serious issue of why we can't do that. Plan Commission advises me today, staff advises me that it would be, from a legal standpoint difficult, if not impossible, at least difficult, I don't want to overstate what Beverly told me, difficult to use it as an R-1 for some legal reasons about the way the title was taken a long time ago and how the parcels were joined. So, we're not going to rehab it and turn that into a beautiful Pollack Avenue condominium, even if we could. We're not going to be able to use it as an R-1. And the question presents itself, what do we do with that? As we drive down Pollack Avenue, what do we do with it? Do we want to leave it empty? Hugh's not going to let it get it trashy, because he lives next door, but Hugh's not going to have any money to put into painting it, and locking up the Coke machine so the vandals don't continue to mess with it. What are we going to do with it if we don't give him an opportunity to recover from the tornado and use it in a productive manner? Again, I think that the B-Dry use is just, to me, I mean, I can't believe that, when he called me, and, you know, you had to slap yourself in the face that he really found somebody that could use this productively, lease it from him, and have the least possible intrusive use, as far as

the neighborhood is concerned. Now, we are prepared today, we would like for you to vote favorably for it. We think it's in the best interest of the neighborhood to put this to a productive use. We think it's in the best interest of B-Dry, to the neighborhood to have B-Dry in there. We are prepared today, if you feel uncomfortable, for any reason of giving a C-4 zoning, we are prepared to go back and give another use and development commitment. We're prepared, and I hope I speak for Hugh, if I don't, you can kick me as I speak, but we're prepared to say no use is acceptable, a B-Dry storage facility or a fire department use. There's a possibility, I mean, it's thin, but a possibility a fire department might someday want that back. So, without a complete rezoning, we could only use this property for a fire station, or for the B-Dry storage. Let me say one more thing, so, we're willing to do that. We're that committed and that serious to keep B-Dry there, and to get a use for this property and make it productive and not have a vacant building next to Hugh, and a vacant building while I'm on my way to Angel Mounds, see that building with a seven on it just sitting there vacant. We are prepared to do that if that's something that this body would be, if you feel for any reason uncomfortable about the C-4 zoning.

President Musgrave: Okay.

Edward Johnson: We would be willing to do that. Final statement, and I'll sit down, B-Dry stores stuff in the building, but they don't have any chemicals. They don't have any walk up, and they don't have any chemicals. They store plastic pipe, they store concrete bags, they store sand, pea gravel, they store things like that, some tools, and, of course, in the bays they'll have the new dump trucks that they go out to the homes and businesses with. So, we ask you to give us a C-4, a favorable C-4 vote. The alternative, we ask that we be allowed to get a use and development commitment that would show you just how serious we are about making sure that this is used by B-Dry or a fire station. Thank you.

President Musgrave: Thank you.

Edward Johnson: Hugh is here, if you have any questions. He is the owner. He's lived at this property, and he would be glad to answer any questions that you might have.

Hugh Hazlewood: Well, that would be B-Dry, a fire station, or residential.

President Musgrave: Okay, Commissioners, do you have any questions of the petitioner?

Commissioner Shetler: Of course, I mean, you may not be able to answer the question since neither one of you are with B-Dry, but you did mention that they would have certain products that they have to use in their process, and I'm not familiar with, I'm not familiar with the company, the name of it, but I'm not familiar with the kind of products that they use in their business, but you said cement bags and things like that. I assume that there are some deliveries that are made then occasionally?

Hugh Hazlewood: They have their own trucks.

Commissioner Shetler: To re-inventory their supplies and stuff?

Edward Johnson: They take the pipe and the sand and the pea gravel in by their own trucks. That's basically what they do. They don't, as I understand the business,

they have a drainage system outside of the basement, and that's why the pipe, the PVC pipe they use that and then they use the pea gravel and the sand over the top of that. So, they make their own deliveries. The County Engineer indicated Pollack is too small to have semis come in there. That's not a good idea. So, when Hugh filed this, he also had a use and development commitment, one that is right now before you that says no semis. He posted a sign that is visible, it isn't on that one, but it's visible on what I gave you, "No Semi Trucks". So, we want to make sure, and the County Engineer is right, the use of semi trucks, the property is too small for that.

Commissioner Shetler: They did also point out, I think, as well, though, that even vehicular traffic of any kind, smaller vehicles, may have to back out onto Pollack Avenue, because there isn't enough circular flow there to allow for, you know, a car or a small minivan type thing to be able to pull around there, to park, pull around and go out forward and stuff. You know, it's a terrible dilemma, I think, right here, because we're looking at a situation that I don't know what you would necessarily do with the property, but at the same time it appears that, you know, what was done in 1930 isn't what we can get by with today, because things have changed. You know, we have 53 foot trailers that are hauling things today. You had 32 foot trailers in 1930. So, everything has changed. The width of the trailers are now 8.4, whereas, in those days they were 7.6. So, when you start looking at all those factors, it was something that, then it could work, and today it does make it difficult. We have a difficult dilemma here, I think, as far as trying to decide what are you going to be able to use this property for? But, at the same time, do we take a 1930's building and try to fit it into today's environment when it doesn't seem to fit, safety-wise, for backing out onto the street and things like that.

Edward Johnson: Can I address that?

Commissioner Shetler: Please.

Edward Johnson: I would like to address that, but I would like to go over here and do it. Here's what I think—

President Musgrave: Mr. Johnson? There's a microphone that you can travel with, or do you have the pointer with you? Okay, will that work?

Madelyn Grayson: Testing. Or you can use this cordless mic.

Edward Johnson: I'll just stand here. I'll just stand here. The parking can be in front, that's where the, you could park it here, since there won't be any traffic coming in, it will only be the six working people that come everyday. They can back out this way and then out. Or, what I prefer to do, see them do, is back into here and use this area as a turn around. You also could park over here, I don't, and someday we may have to park over there, we can't, heck, we can park in the back. We've got enough room in the back, but you could use this as a turn around, you could park in the back. Clearly, you can run out the front. I don't think that it would be backing onto Pollack Avenue. I think there's enough concrete in the front of that building that we'll be, and enough room on the side that we're not going to have any, and we're only going to have six cars. I don't think we're going to have any problem backing around and driving out front ways.

President Musgrave: Area Plan is sort of indicating they might want to respond, but you will have to come to the microphone.



Bev Behme: I just wanted to add that site review will address the parking, and the access in and out of the property. I mean, they could submit a plan, but it would have to go through the process.

President Musgrave: We're here to consider the zoning tonight—

Bev Behme: Right.

President Musgrave: —and not the parking.

Bev Behme: Exactly.

President Musgrave: And I understand there are three remonstrators. We have three signed in. Is it Michael Roberts? Please state your name and address for the record.

Michael Roberts: My name is Michael Roberts. I live at 11229 Reynard Drive. I am the president of Friends of Angel Mounds. I spoke at the Area Plan Commission. I do not plan to go over all of that again. But, I think the point was made very clearly a minute ago. This building was built in the 1930's and the situation was drastically different than it is today. I have in my possession a picture that came to me this morning. I don't have copies of it, but I would be happy to show it to you. This is Angel Mounds neighborhood about 1940, 65 years ago. And two things jump out at me, and should jump out at you. Number one, on Angel Mounds site there's not very many trees, and today we have hundreds of acres of trees there. But, another thing that's very apparent is, there's almost no houses, there's no anything, there's very few structures. Today that is a complete, residential neighborhood. This is a residential neighborhood, and I would like to point out that I don't think there's any commercial zoning for two or three miles in Vanderburgh County. I mean, you have to go all the way to Green River Road, to the best of my knowledge, to find any commercial zoning. The question I have is, does a commercial zoning designation, or any other designation last forever? If we put something as commercial zoning in 1900, does that mean it's appropriate for 2006? I don't think so. We are very sensitive to not having a commercial zoning here, because there are other pieces of property down the road that could conceivably ask to become, you know, commercial zoning. Whether that will happen, I don't know. But, I have seen things happen that I never would have imagined before, one of which was the trailer park at Lynn Road and Pollack Avenue that I know somebody came before the authorities 30 years ago and asked to put a trailer park in there and was denied because it was in the flood plain. You know, things change. My point is that what you may do today could be, you know, changed down the road. I understand Mr. Johnson's position and Mr. Hazlewood's position about trying to lock in just the B-Dry company in there now. Can we guarantee that? Once this property is sold, or given to somebody else, will that last forever? Or will we have, you know, somebody else here? I do need to repeat this, yes, Angel Mounds Historical Site is sensitive. We have 603 acres, and we are very sensitive to what happens around us, especially in a commercial way, because as I said last week, it's happened all over the country where commercial ventures have gone in next to, you know, places like us, and it's had an adverse effect. I do not doubt Mr. Hazlewood's desire to use his property, but I have a strong feeling it should not be for commercial development. I understand it might take some real money to make his building attractive for some other purpose. I understand that, but the question may very well be, as time passes, you know, property on, is it appropriate? We do not feel it's appropriate for a C-4 zoning, for commercial development at this property. Thank you.

Commissioner Nix: I have a question. If this was to just be specifically used for this operation, and no other operation at all, and everything that has been talked about here today was done just exactly the way it is, with the understanding that if anything changes, the board, I guess, the whole process would have to be started all over again, would you have an objection to that?

Michael Roberts: You mean to make it for B-Dry?

Commissioner Nix: Specifically for that, with the understanding that there won't be any semi traffic, that there won't be any outside storage, that there won't be any retail, the people that are there are the people that work to come and go during the day, the six people, would you have an objection to that?

Michael Roberts: The problem I have with that, and I understand where you're coming from, is can you legally bind a County Commission in the future to that kind of agreement? Say five years from now or ten years from now if this changes hands and there's a desire to change it to something else. That's part of my concern.

Ted C. Ziemer, Jr.: The covenant would bind, would run with the property, and would be binding on all future County Commissioners, unless there is a new petition to rezone, which would come before those County Commissioners, in which case, of course, they could rezone it, if they wanted to. But, they would be faced, presumably, with you or your successor coming in and making the same statement you are tonight, knowing that it had had that very special designation, and then they would have to decide whether they wanted to relieve the property of that covenant or not.

Commissioner Nix: I guess, the concern I have is, and this probably goes without saying is that properties that aren't rented, that don't draw income, have a tendency to devalue other properties in the area. I know that this isn't what you would call someone else's house across the street, but my concern is that if it's not rented, will it be kept up? Then you get in the situation where, another whole different situation then. Just a thought.

Michael Roberts: To be honest, I'm not sure.

President Musgrave: Okay. Questions?

Commissioner Shetler: I don't have a question of Mr. Roberts, but I do have a question, I guess, of Mr. Ziemer. It appears that had this, maybe I'm incorrect on this, correct me if I'm wrong, but it appears had they not converted this to the fire station, that it would have continued on with the legal, non-conforming use?

Ted C. Ziemer, Jr.: Well, I would have to ask—

Commissioner Shetler: Would that not change the status of things?

Ted C. Ziemer, Jr.: Let me ask Bev. Is this, was the fire station a legal, non-conforming use?

Bev Behme: No. It had a non-conforming use, a legal, non-conforming use when the fire station came in.

Ted C. Ziemer, Jr.: Okay, you mean the store or whatever was there before was legal, non-conforming?

Bev Behme: Was legal, non-conforming.

Ted C. Ziemer, Jr.: Okay.

Bev Behme: When the fire department got the special use, that legal, non-conforming was abandoned. Then it was, the special use was before the Board of Zoning Appeals, and they granted the special use for the fire station. From that point on, as long as the fire station was there, it was a special use.

Commissioner Shetler: So—

Ted C. Ziemer, Jr.: Go ahead.

Commissioner Shetler: Well, okay, so the owner, the current petitioner was the owner at the time, and he petitioned—

Bev Behme: For a special use for the fire station.

Commissioner Shetler: —for a special use for that, and he was advised at that time that he would lose his grandfathering? I guess, would be a more layman's term.

Bev Behme: I'm not sure what he was advised at that time, but I don't know if it was vacant before then, but once the fire station went in, and was used for that use, it lost its commercial, legal, non-conforming. So, now it's just a vacant property. Because when the fire station goes, the special use goes with them.

Commissioner Nix: What would you consider the zoning on this parcel now?

Bev Behme: Well, the zoning is, it's R-1.

Ted C. Ziemer, Jr.: With a special use for a fire station?

Bev Behme: With a special use for the fire station. You could have a fire station in there.

Commissioner Shetler: And before was it considered, had it, would it have been considered a C-4 had it been legally brought up back in 1982 when the code was changed?

Bev Behme: No. It was granted a legal, non-conforming.

Commissioner Shetler: Right. I understand.

Bev Behme: The zoning still stayed, but you could use a commercial use of whatever it was at the time it was brought up.

Commissioner Nix: That was specifically for a fire station period.

Bev Behme: The special use?

Commissioner Nix: Right.

Bev Behme: Yes.

Commissioner Nix: So, the process that we're talking about now would be the same process that should be gone through possibly?

Bev Behme: Well, no, the special use provision is before the Board of Zoning Appeals. The zoning doesn't change. A special use is just stacked on top of it.

Commissioner Shetler: I'm really kind of talking about that area of '82 to '89.

Bev Behme: Okay.

Commissioner Shetler: That gap in there.

Bev Behme: Right.

Commissioner Shetler: The use that it was, at that time, would that have been considered a C-4 usage at the time?

Bev Behme: Yes.

Commissioner Shetler: Okay, but because he went for a special use, it reverted to an R-1 zoning, but a special use of the fire station. Now, I guess, my question would be to you, since you petitioned that, at the time were you informed that, did you understand what you were going through?

Hugh Hazlewood: No, I did not. I thought I would get it back.

Commissioner Shetler: Did you have legal counsel?

Hugh Hazlewood: No, I didn't. The fire station took care of it. They filed the whole petition.

President Musgrave: Okay, we have two more remonstrators, if you've made your points, Mr. Roberts. I'm sorry, I can't read this. Is it Jo Kaetzel?

Sheryle Mills: She wishes not to speak.

President Musgrave: Okay. Sheryle Mills?

Sheryle Mills: Yes.

President Musgrave: Okay, thank you. I'm sorry I didn't get your name right, probably, but I can't really read it.

Sheryle Mills: Hi, my name is Sheryle Mills. I live at 8200 Pollack Avenue. We moved in our home in 1985. It was built in '85. We moved in at the end of '85. At that time there was no business in there, in the fire department building at all. Then Hugh moved in a couple of years later, and at that time I believe it was still zoned C-4, but, all I remember being in there was, he called it Ten Little Indians, it was like a little store that he had there. Then, it wasn't too long after that that it was zoned R-1, and then the fire department was in there for, I believe, 12 years. I really don't have a problem with B-Dry going in there, as long as that's all that will go in there. But, when you make it C-4, you're opening the door to so many different businesses.

I have a listing of all the businesses that can go in there, there's 174 businesses I believe that can go in there. I just don't want to open that door to where we can have anything and everything going in there.

Ted C. Ziemer, Jr.: The legal effect of the use and development commitment, which they would have to make, saying that it would only be B-Dry, means that none of those other uses can be in there, unless the petitioner comes back to the Plan Commission and petitions to rezone that property for some use other than B-Dry.

Sheryle Mills: Right.

Ted C. Ziemer, Jr.: So, your problem would be addressed if they file that use and development commitment for B-Dry only.

Sheryle Mills: Right.

President Musgrave: Are you finished with your remarks?

Sheryle Mills: Once again, there were several issues that were of concern, and I think that most of those have been addressed, but I still would like to go over them again.

President Musgrave: Please do.

Sheryle Mills: Traffic, we're, all the neighbors are worried about the traffic. There's a bus that stops six times, and I addressed this before, but I will again, it stops on the corner of Indian Mounds Boulevard and Pollack Avenue, on his corner the bus stops six times a day. That's in the morning and the afternoon. That concerns me with there being extra traffic there. The programs that have increased at Angel Mounds, they've increased, they have more programs now than they've ever had. I know that the traffic's picked up from there, so, you know, we're not wanting more traffic. Angel Mounds is great for the community, I'm glad they're there, and that's one of the reasons why we moved in our house is because Angel Mounds was there, and we knew nothing would ever build there. So, when we moved in, we were thinking, "Oh, no commercial, all residential, this is great!". Because, at that time, there was nothing in the fire department building. Parking, that was our other concern, because there is very little parking. The neighbors keep up the boulevard. We all mow the boulevard, we all take sections and we all mow it. If there's not enough parking, a lot of times people will park on the boulevard. That did happen when the fire department was in there, but it was so less often that that happened, that we weren't really that concerned about it. But, if it was on a daily basis, that would not do very well. I know it's owned by the county, but we do keep it up, and we want to keep our neighborhood nice. It's a residential area. A lot of the families are trying to rebuild after the tornado. Our house was hit very hard, so we're all trying to rebuild. Then we're worried about property values. You know, if something goes in there, what's it going to do to our property value? Another issue is all the homes in that area are on well water and septic, and so is the fire department area. Then, the insurance on the building was another concern, because that's one of the reasons why Knight Township moved out is because there wasn't insurance on the building, and when the building was damaged, they were worried about their equipment. So, the equipment was taken to the people's houses, instead of being stored in that building. So, that makes you wonder what's going to happen? Who's going to insure it? You know, maybe that's none of my business, but I would like to know, because I live right across the street from it. If B-Dry is going to sign a long

term lease, that's one of the things that, you know, I would like them to come to the table saying, "Oh, we have a lease, tentative lease signed that he is going to stay here for 18 years, or for 15 years, or for 10 years." You know, that way I could accept that more with that business going in there. The fire department was in the building, I believe, 12 years, and it was zoned R-1 at that time. From the way I understood it, when the fire department went in there, it was zoned C-4 and the special R-1 zoning, and then it no longer, the C-4 was dissolved. Now, he's wanting that back. That's all I have to say.

President Musgrave: Thank you very much.

Sheryle Mills: Thank you.

President Musgrave: Commissioner Nix, did you have a question or a statement?  
Commissioner Shetler?

Commissioner Shetler: I do have a question, and that is since Mr. Johnson is coming forward, the B-Dry do they intend to store that gravel and sand and stuff inside that building or outside or both?

Hugh Hazlewood: I think, they didn't say anything about any sand.

Edward Johnson: Go ahead.

Hugh Hazlewood: At the back of the parking area along the side of the building they wanted to put a pile of gravel there. That would be in a fenced in area.

Commissioner Nix: That's around the back of the building, or on the side?

Hugh Hazlewood: Not around the back, but at the back of the side.

Commissioner Nix: So, straight back at the end of where the rock is now?

Hugh Hazlewood: Back where that black barrel is, the black barrel.

Commissioner Nix: Okay.

Hugh Hazlewood: Back in that area we had planned to extend the fence across the back, a privacy fence, and toward the front for about 20 feet, and that was to store their gravel and their concrete mixer, and I think they've got a generator.

President Musgrave: Okay. I sit on Area Plan, and I know that the folks who sit there and listen and vote month after month on petitions do this quite diligently. While I was late in returning from Indianapolis, and was not able to hear all of the testimony that was said either by you or your client or the remonstrators, I did come in at the tail end, and I could tell that things had become quite passionate, and every member of the board voted against this, except for me and another gentleman who had arrived late, and he also abstained. I find this to be a difficult case. You did have a business there, and you lost the zoning due to the zoning laws, but this is a piece of property smack in the middle of entirely residential property. I've not voted for any spot zoning like that on any other petition, and I can't support what you're asking here today, even though my fellow Commissioners may support you. I just wanted to explain to you that it's because of the spot zoning nature of this. It's not because I don't support B-Dry, a wonderful business here that I someday may hire myself to

keep my own basement dry. It's because of the nature of this property, and where it's located. So, I did want to say that on the record before the discussion moved forward.

Edward Johnson: Could I respond and then I'll let you guys vote? The only thing I wanted to say, it seems to me when you listen to the complaints, or concerns more than complaints, concerns of the neighbor and of Angel Mounds, which we don't take lightly. It is a nice neighborhood and Angel Mounds is a community asset, no question, but when you listen to it, it seems like that nobody really has a problem with B-Dry going in there. They don't want, because there's not traffic generated, you know, all the things that would be, could be a problem if there was a different use on that small piece of property are obviated with B-Dry. What I would ask you to do....I sit there and listen and I'm thinking, we'll give you a use and development commitment, and we'll limit it to a single family, a fire station and the B-Dry company, with six employees, no outside storage that's not fenced in. I can't do that unless you vote, as I understand from what Bev told me, in order to give us an opportunity to put this property to use and give you that kind of use and development commitment that would be binding, that would give the neighbors and Angel Mounds a certain, a great level of comfort.

President Musgrave: I'm going to ask you to take a pause here while we change the tape.

**(Tape change)**

Edward Johnson: You would need to vote affirmatively to send it back to the Area Plan Commission so that we could amend our petition by, probably the tightest use and development commitment you've ever seen.

President Musgrave: Well, I'm willing to send it back to Area Plan for further consideration. I have no problem in doing that.

Edward Johnson: Well, I guess, that's what is. Now, Hugh, this is your property, it's not my property, is that what you want?

Hugh Hazlewood: Yes, I believe so, at this point.

Edward Johnson: And you understand that you would have to file a use and development commitment, in writing, within a certain period of time?

Hugh Hazlewood: Yes.

President Musgrave: And Area Plan might not agree to that, and when it comes back here we might not agree to that either. There's no guarantee here of any action.

Edward Johnson: I understand. That's our request.

Commissioner Nix: It's my understanding now that this has been to Area Plan that no matter what happens, unless we waive this, not the hearing, but, Beverly, I don't know if you can help us with that or not.

Edward Johnson: I'm sorry, Bev.

Bev Behme: What you could do tonight is send it back to Area Plan Commission so Mr. Hazlewood can amend his use and development commitment. You cannot vote on anything, on a final decision, unless it comes out of Area Plan Commission.

Commissioner Nix: And because Area Plan has already denied this, there's no year?

Bev Behme: No, they have 90 days.

Commissioner Nix: Okay.

Bev Behme: There's 90 days from Area Plan's vote. So, if you would send this back to Area Plan for Mr. Johnson to do a use and development commitment, it will go back to Area Plan. Now, I tried to check to see if it could go in August, and I wasn't able to, the person that does that wasn't there. So, it may be back in September, but that would still be within that 90 day period.

President Musgrave: Okay.

Bev Behme: With your vote, that would start the 90 days over again, to go back.

Commissioner Shetler: Obviously, this is the category it has to be in, but why? I mean, what constituted and necessitated the fact that it had to go to a C-4, instead of a C-1 or a C-2?

Bev Behme: Well, I'm not sure what Mr. Hazlewood had in mind when he originally filed it. But, this particular use would have to go in a C-4. It has some outside storage, it's a contractor's office, that is specifically listed in a C-4. So, if this company, I forgot what the name was—

Commissioner Nix: B-Dry.

Bev Behme: —wants to be in that location, it would take a C-4. They couldn't go in a C-1 or a C-2.

Commissioner Shetler: And can we specify something with a use and development that tight?

Bev Behme: Yes, yes.

Commissioner Shetler: That tight, without, I mean—

Bev Behme: It's been done before.

Commissioner Shetler: And it holds up in court?

Bev Behme: Yes, it has.

Ted C. Ziemer, Jr.: The Commissioners wouldn't be specifying that, the petitioner would be specifying that, and the Commissioners would be faced with, after the Plan Commission, voting on whether to approve the zoning with that use and development commitment.

Commissioner Shetler: Alright.



Bev Behme: And that use and development commitment is attached to the zoning. It's going to travel right through any ownership, and each owner would have to abide by that use and development commitment. If someone else, and we've had this happen a few times, it's not real common, but we have specifically for a company or a use, and if they move out and somebody else wants to go in, they have to go through the whole process again.

President Musgrave: I don't want to give the petitioner any false hope that going back through it would change my mind about B-Dry or spot zoning. Even if you made it just B-Dry, I still do not feel inclined to support that, particularly when you tell me you have six employees, piles of gravel, that just, it just, that use and that neighborhood just does not work for me. So, I just want to be on the record and clear that if you want to take 90 more days and maybe you would come up with something else, I'm not sure what that would be, but if you want 90 more days to work on something, I'm more than happy to give that to you.

Commissioner Shetler: Let me ask this, does that work for you all? Do you think that there's a possibility that something out there could fit? My fear is kind of like what Bill had mentioned earlier, and that is I'm also fearful from the fact this thing sits vacant, what will it turn into? That could be, you know, a worse scenario than B-Dry being there as a commercial activity, limited as it is. You know, as one that's really been concerned about, you know, keep Evansville and Vanderburgh County beautiful, I certainly don't want to be doing something that may, you know, work against that effort.

Michael Roberts: Mr. Shetler, I understand exactly where you're coming from. We'd be happy, you know, to think about it, but, as I said, we have a real concern with any C-4 designation on that property or any other property in the neighborhood. I also have a question, and I don't know the answer to this, when something is zoned or a change of zoning, is there an inspection made on that physical property, the physical integrity of that property?

President Musgrave: I think to get a—

Commissioner Nix: It's complaint driven, usually.

President Musgrave: You might want to check with the Building Commissioner on that. I don't know if he took out permits when he did his repairs, and had inspections as a result of that.

Michael Roberts: I'm not implying that the building is going to fall down tomorrow. But, I am saying it's a 70 year old building that did go through a tornado, and I'm sure this is something the neighbors would be concerned about. What we would be concerned about is how is this building going to hold up over the next few years? Whatever is done with it.

Commissioner Nix: I didn't know if you wanted to address that?

Hugh Hazlewood: Yes, I think I would. I did get building permits when I had the roof rebuilt. I did have a structural engineer, the same structural engineer that built the Vanderburgh County jail, he came out and told me what to do in the way of repairs, and approved the repairs after I had made them.

President Musgrave: Commissioners, are there any more questions, or any more comments?

Commissioner Nix: I guess, just getting back to that, just to make sure, on Commissioner Shetler's question to the remonstrators, I don't think it's the C-4 issue, it's the issue of B-Dry, this company being there, is that acceptable, from your standpoint?

President Musgrave: Make sure you come to the microphone.

Michael Roberts: Speaking for my board and the instructions I've got, no.

Commissioner Nix: Okay.

Hugh Hazlewood: There's one more comment I might make, and that's if the building remains empty, it will be uninsured, and probably just deteriorate.

President Musgrave: Is it insured now?

Hugh Hazlewood: No.

President Musgrave: Alright, Commissioners—

Hugh Hazlewood: I might add that with B-Dry in there, it will be.

President Musgrave: I do live in a neighborhood where a piece of property almost at the end of my block was given a special use permit some years back, and it's particular to this current occupant, and that settled down some discussion in the neighborhood for a long time, until everybody realized that not in our lifetime would it ever go back to being a house. So, giving somebody a license to use something for awhile to accommodate a current situation, in my mind, is not good planning, and we ought to look to what we're supposed to do here, which is to look for a plan. Having said that, maybe we can have more discussion, or we can have a motion.

Commissioner Nix: One more thing, and just to say something, there's a lot of facilities that were built long before this zoning issue ever was in place, and I think that we've got to be sensitive to those issues also, that people have invested money in that long before, you know, once again these were in place, and it's something that we should be cautious of when we either approve or deny these things as we go along.

President Musgrave: I am willing to give them 90 more days to see what they can work out.

Commissioner Shetler: Do we need a motion for that? I do have, I find it is a real dilemma. You get the dentist offices that were built in neighborhoods, they look like houses, you know, they are houses, and they are easy to convert, if they would get denied zoning, because the dentist moves out you want to put it into some other kind of commercial use, like an insurance office, and the body, the legal body would vote it down, it could be converted into a home rather easily. This structure is not going to be converted into a home. I mean, there's just no way. So, I mean, I've got both sides of it here. I'm really concerned that it's going to deteriorate and going to be an eyesore for the neighborhood, on the other side of it, I don't feel comfortable with a C-4 zoning myself. So, I'm willing to go the 90 days, but—

President Musgrave: Is that a motion?

Commissioner Shetler: –there are no promises. That's a motion.

Commissioner Nix: Second.

President Musgrave: We have a motion and a second. Is there any further discussion? All those in favor.

All Commissioners: Aye.

President Musgrave: Motion carries.

Edward Johnson: Thank you.

Commissioner Nix: I make a motion we adjourn.

President Musgrave: Is there a second?

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

(The meeting was adjourned at 5:30 p.m.)

**Those in Attendance:**

Cheryl Musgrave  
Ted C. Ziemer, Jr.  
Edward Johnson  
Sheryle Mills

Bill Nix  
Madelyn Grayson  
Hugh Hazlewood  
Others Unidentified

Tom Shetler, Jr.  
Bev Behme  
Michael Roberts  
Members of Media

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl A.W. Musgrave, President**

---

**Bill Nix, Vice President**

---

**Tom Shetler, Jr., Member**

**VANDEBURGH COUNTY  
REZONING BOARD  
SEPTEMBER 26, 2006**

The Vanderburgh County Rezoning Board met in session this 26<sup>th</sup> day of September, 2006 at 4:24 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

Bev Behme: Do you want me to go ahead and do first readings?

President Musgrave: Would you please?

Bev Behme: Good afternoon.

**Approval of the July 18, 2006 Rezoning Meeting Minutes**

Bev Behme: First on the agenda, we need to approve the rezoning minutes.

President Musgrave: Bev, please move the microphone closer to you. Thank you.

Bev Behme: The rezoning minutes for July 18, 2006.

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

**First Readings:**

**VC-13-2006: Petitioner: Robert C. And Angela Schockman  
Address: 3910 N. Burkhardt Road  
Request: Change from AG to C-4**

**VC-14-2006: Petitioner: PAMS, LLC  
Address: 4905 Pollack Avenue  
Request: Change from AG to C-4 with UDC**

**VC-15-2006: Petitioner: Broadway Summit, LLC  
Address: 2708 N. Green River Road  
Request: Change from AG to C-4 with UDC**

**VC-16-2006: Petitioner: Elite Development Group, LLC  
Address: 1034 Beacon Hill  
Request: Change from AG to C-2**

Bev Behme: We have three first readings, I'm sorry, four first readings. VC-13-2006, the address is 3910 North Burkhardt Road, from agricultural to C-4. Do you want to do these as a group?

President Musgrave: Yes, please.

Bev Behme: VC-14-2006, the PAMS, LLC, 4905 Pollack Avenue, agricultural to C-4 with a use and development commitment; then VC-15-2006, Broadway Summit, LLC, 2708 North Green River Road, agricultural to C-4 with a use and development commitment; VC-16-2006, Elite Development Group, LLC, 1034 Beacon Hill, change from an agricultural zone to a C-2 zone. These just need to be read into the record and forwarded to APC.

President Musgrave: Is there a motion to approve?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

**Final Reading: VC-12-2006: Petitioner: Hugh Hazelwood**  
**Address: 8100 Pollack Avenue**  
**Request: Change from R-1 to C-4 with UDC**  
**Action: Approved 2-1**

President Musgrave: We move now to the final reading.

Bev Behme: We have one final reading. That's VC-12-2006, petitioner is Hugh Hazelwood, 8100 Pollack Avenue, R-1 to C-4 with a use and development commitment. Mr. Hazelwood is requesting to change the zoning of a portion of his property located at 8100 Pollack Avenue from R-1 to C-4 with a use and development commitment. This two tenths of an acre site located on the north side of Pollack Avenue, just west of Indian Mounds Boulevard. On July 18, 2006 the Vanderburgh County Commissioners voted to send this petition back to the Area Plan Commission to allow further amendment to the use and development commitment. The new use and development commitment limits the site to a single C-4 use, a home and business improvement company. The commitment limits use of the site to office and storage of equipment, vehicles, and work related non-hazardous materials. All storage will be contained within an opaque fencing. There will be no display of materials, no direct sales from the site, no semi-trailers allowed on the premises, and the existing 2,400 square foot building shall not be enlarged. This site on Pollack Avenue was the former location of Knight Township Fire House number seven. The original block garage on this site was built in the mid 1930's and was certified as a legal, non-conforming commercial neighborhood retail use by the Area Plan Commission in 1982. In December 1989 the fire house was established on this site by approval of a special use permit by the Board of Zoning Appeals. The legal, non-conforming commercial classification was abandoned by the owner of the site upon conversion to the public building use as a fire station. Two additions were made to the fire station during their occupancy of the site. This is a request to rezone the vacant site to C-4 with a use and development commitment to allow re-establishment of a commercial use within the commercial building on the site. Pollack Avenue at this location has no curbs or sidewalks, and the property is currently graveled to the street. Commercial use of the site will require review and compliance with a site review committee recommendations. Comprehensive plan

future land use designates this area as residential and undeveloped, surrounding area is completely agricultural and residential. The Area Plan Commission heard this amended petition on September 14<sup>th</sup>. Their no recommendation vote was five affirmative votes, three negative votes, and one abstention.

President Musgrave: Mr. Shively, are you the attorney this evening?

Les Shively: Madam President, members of the Board of Commissioners, my name is Les Shively, I'm sort of the second stringer here, filling in for Ed Johnson who couldn't be here today. So, bear with me. I'm sorry Ed couldn't be here, and you're going to have to deal with me today. Let me just, the staff report that Beverly gave you is very detailed, but let me hit a couple of highlights that I think are important, just so we can put this all in perspective. There have been comments made, and I read in the minutes from the other hearings that I was present at, this is not the only C-4 in the area. Do you see the purple strip running up and down? That's the back portion, if you will, of Stemaly Excavating's operations. They extend over to Fuquay Road. That is zoned C-4, and it extends all the way to Pollack Avenue. In my understanding, reading the maps, everything just south of Pollack Avenue across from that does belong to Angel Mounds. So, there is presently now a C-4 directly across, just directly north of the Angel Mounds property. So, I want to make sure everybody understands that. If you could, do we have the photographs of the building? As you can see from the structure, that structure has never been a residential structure. It was a service station back in the '30's, and remained a legal, non-conforming, in fact, it was established before we even had zoning law in this particular part of Vanderburgh County. It was used for commercial purposes and got the legal, non-conforming designation. That all changed when Knight Township entered into an arrangement to utilize the property for its operations until this last year following the tornado, with you all assisting them in their new location, and I'm sure you're well aware of the transition. Because of that, it lost its legal, non-conforming status. My client now is in the horns of a dilemma. This property has never been used for residential purposes. He wants to put the property to some sort of economic use. He's retired, he's on a fixed income, this helps supplement his income, the rent. He's found the perfect tenant, the one that will fit perfectly there, that doesn't need all of the typical things you would have with a commercial, and thus we are, my client's in a position to put this very restrictive use and development commitment. Essentially, limiting it to this particular user, this type of user. No semi-trailers, the building being, the footprint of the building itself will not change. Any outside storage will have to be behind the opaque fencing, no sales display, no, you know, sales activities, this is just basically for the office and storage of materials for this particular business. It does its operations at other sites for its customers. It's a great fit. As I'm sure you all are aware, on use and development commitments, if the ordinance is approved, these commitments run with the land. Should Mr. Hazelwood decide to sell this property, these restrictions run with the land and they are binding upon subsequent owners. The only way they can be changed is if someone brings a petition to get relief from that via a rezoning petition, and you all would ultimately be the ones to make that decision. Until that happens it will remain in perpetuity limited to this very narrow type of use. Again, without this, this property basically will remain vacant, not useable, probably generate little, if any, kind of tax revenue. This is a win-win for everyone. It gives the neighbors out there some assurances of what's going to be there, and more importantly what's not going to be there. Some things I would like to share with you, because I know you're going to hear from Mr. Roberts, I went out there after Ed had asked me to pinch hit, and I took my digital camera, and I'm not the best photographer in the world, but I stood at the entrance to Angel Mounds and looked out towards where this property is

located, which is about three tenths of a mile. You can't even see this property from Angel Mounds. I'm going to share these photographs with you here in a moment, but, again, I would bring to your attention, there's already C-4, I believe it's unrestricted, immediately across the street there as you go further to the west, as you go towards Fuquay Road, immediately across from Angel Mounds property. So, here are the photographs. Again, we believe this is a win-win proposition. It reaches the concerns of the neighbors, and I believe there's one neighbor, I believe her name is Sheryle Mills, who was here the last time, and she had talked to the Plan Commission, and she expressed the fact that she was pleased with this use and development commitment, because she knows it's going to be limited to what's there, and it will at least be productive and won't be abandoned, which leads to other problems, as you know. We believe you'll probably be here from a little bit later, we have a gentleman here just briefly, if you would come forward, sir, and state your name.

Bobby Dancy: I live at 8022 Pollack. It's just to the left of the property that you have there. It will be (Inaudible. Microphone cutting out.) My name is Bobby Dancy. It will be a, I like the security lights and all (Inaudible. Microphone cutting out.) that will be added.

Les Shively: Thank you. Again, we've tried to meet the needs and the concerns of the neighbors, and, again, not to repeat myself, but this is certainly a better solution than having the building abandoned. The neighbors seem to be pleased with it. Again, we're more than happy to answer any questions you have. Mr. Hazelwood is here this afternoon as well. Again, we would be more than happy to answer any questions you have about this request.

President Musgrave: Are there any remonstrators to speak? Sir, would you come forward and state your name?

Mike Roberts: My name is Mike Roberts. I'm president of the Friends of Angel Mounds. Since Mr. Shively used my name, I guess, I'd better get up here and say a few words. Our objection still remain that regarding this as a C-4 development. We believe that this building's time has passed. We are concerned with C-4 development along the whole area. As Mr. Shively pointed out, there's another one down the street, which, frankly, I don't think anybody's real happy with. I just feel strongly that we ought to be able to find another use, that this building should be fixed up. I know that comments have been made by Mr. Hazelwood, to some people, that after the tornado how little money was actually put in for repairs. He got volunteers to help him repair the building. I also know that the first time this went around to the Area Plan Commission, I questioned the integrity of the building, and I'm not a building person at all, but, you know, this is an old building. I appreciate the people's concerns about a building standing vacant, that is true, but also structures that stand vacant very long, quite frankly, should be done away with, in my view. There is another problem there that came to my attention recently, and it's been there a long time, so, this is a long standing problem, and it is a problem all over the county, and that's standing water. We do know that this property is a little bit higher than some of the other property, and I know that some of the residents out there, very near there, have had a real problem last weekend with the water. At the last time the Area Plan Commission met a week or so ago, that very day I was meeting with Ms. Gail Rieken, of the Parks Board, regarding Angel Mounds boat ramp. It was very interesting because after we met at the boat ramp and looked at some things, I was approached by a gentleman who wanted to make, talked to me and my friend about the boat ramp, had a proposal to put in a boat storage facility near

there. I didn't have a chance to talk to him, but I quickly realized there would be a little bit of a problem because of the flood plain. Obviously, we would be opposed to this, because this is right on our doorstep, because now Angel Mounds does have all the property up to Lenn Road, even the property that is now being cultivated, it is under our control, because we have a little over 600 acres. This is a dilemma. I do not believe that this is the solution to the dilemma. I do believe, and Mrs. Musgrave can correct me if I'm wrong, Mrs. Lynn of the Area Plan Commission, the first time this came around, she spoke up talking about that this should be made in to something else, residential or, you know, some other type of facility. We believe that should be. This area is growing. There are more and more people. We are on the edge of Warrick County. I know we're not, have much to do with Warrick County, but I would like to point out from Stacer Road all the way to Mulzer Stone, there's just a whole host of houses and apartments being developed, and the traffic is increasing all the time on Pollack Avenue. I'm not sure this Commission will have to face this problem, but I would predict the day will come when you'll have to take a serious look about expanding and doing something with Pollack Avenue, because I've already seen the traffic. I'm sorry, but we remain opposed and do not believe that this should pass.

President Musgrave: When you say, "we", to whom do you refer?

Mike Roberts: I'm talking about our board of directors. We had a meeting the other night, we have a monthly meeting, and we talked about this again because it was coming up again.

President Musgrave: That's the board of directors for the?

Mike Roberts: Friends of Angel Mounds. We meet on a monthly basis. We have about 20 members-

President Musgrave: Fine.

Mike Roberts: --on our board.

President Musgrave: So, they have asked you to appear here and to oppose?

Mike Roberts: That's part of my job being president.

Commissioner Nix: Congratulations.

President Musgrave: I do have a question for Bev Behme, if you're available? Thank you, sir. This twice failed to win the approval of the Area Plan Commission?

Bev Behme: The first vote was on July 13<sup>th</sup> was denied, zero yes, ten no's, and two abstentions. Then, on the 14<sup>th</sup> of September, there was a no recommendation. You have to have at least seven one way or the other. It was 5-3 and one.

Commissioner Nix: The first time it was, it came to the board with just a C-4 zoning, is that correct?

Bev Behme: Correct, well, I think it had a use and development commitment, but they amended that to make it more restrictive.

Commissioner Nix: And that was on the second vote through?



Bev Behme: That's correct.

Commissioner Nix: Okay.

President Musgrave: To clarify about it's "grandfathered" zoning, when it was part of it's use as a fire station, could you explain a little bit, when Vanderburgh County adopted zoning regulations, some properties were described as legal and non-conforming, why would those properties have been given such a status? Why weren't they zoned one way or another?

Bev Behme: Well, there still exists legal, non-conforming property in Vanderburgh County that was either there prior to the zoning requirements, or the zoning requirements have changed, or they were actually annexed into the city. Then, a lot of agricultural property that was brought into the city, and it states in the zoning code, it automatically becomes R-1. But, this was commercial property, when the fire station received their special use it became a fire station. Once it became a fire station, it lost it's commercial, non-conforming status.

President Musgrave: My question is more why was it considered non-conforming? Why wasn't it zoned what the use it actually had?

Bev Behme: Well, unless the property owner petitioned to have it zoned. I mean, we normally don't go and rezone property to bring them into compliance.

President Musgrave: I guess, I'm still not sure you answered my question, which is when we adopted the zoning regulations and it was called non-conforming, is that because the area around it was considered residential and this was thought to go back to residential at some point?

Bev Behme: No, well, to have something legal, non-conforming, it's always our plan to bring those into conformance there, either by rezoning or if it were....well, even if it were taken down, it would still retain the zoning. But, as I said, there's still property, and you have down zonings, we have at least two or three a month, every month at Plan Commission, because they're residences in commercial areas, and those are there until the property owner attempts to rezone them.

Commissioner Nix: How much property is this sitting on? I think it was brought up a few minutes ago.

Bev Behme: It was two tenths of an acre.

Commissioner Nix: Two tenths? And that includes the building and the lot we're looking at, and the lot around the back? There's a drive with it?

Bev Behme: Correct. I think, originally, it was Mr. Hazelwood's house, to the east of that, and I believe this was the garage.

Commissioner Shetler: Actually, I'm sorry, were you finished? Actually, I think if the Area Plan, at the time of that ordinance, would have just gone through and just given each one of these legal, non-conformings the new change in status, for example, made it C-3, or C-2 or C-4, we would be facing a real problem today in that there's a whole lot of things they could have put into here, as opposed, without ever coming before this body, or anyone else.

Bev Behme: That's true.

Commissioner Shetler: So, by doing it the way they did it, it does allow some public review, so that we are able to make sure that it fits within 2006 standards, as opposed to 1950 standards.

Bev Behme: And there was a public hearing when the Board of Zoning Appeals awarded the special use for the fire station.

Commissioner Shetler: Right, and when they did that, by the special use, had to go with an R-1 compatibility, and you didn't have legal representation, I don't think, at the time to adequately explain to you what the effect would be down the road. Had you had that professional legal advice, perhaps you would have done something different on getting that—

Hugh Hazelwood: I think I would have asked for a C-4 with (Inaudible. Microphone cutting out.)

Bev Behme: Well—

Commissioner Shetler: I'm trying to give a commercial here for our professional attorneys.

Bev Behme: I know, I know, but normally on fire stations all over the city and the county, those are special uses that can go in any zone. So, the zoning was not an issue when the fire station, once the special use was there, whatever commercial zoning had been legal, non-conforming was wiped out.

Commissioner Nix: From a practical standpoint, I'm looking at this picture right now, and I'm saying if a person decided they wanted to put apartments in there, the things you would have to do to build apartments on two tenths of an acre, you don't have enough parking, structurally you would have to do a tremendous amount of things, cosmetically, to rent it out. So, I don't—

Bev Behme: You would have to rezone it even for that.

Commissioner Nix: It still would have to be rezoned.

Bev Behme: Right. It would still have to be rezoned.

Commissioner Nix: Right, so, that's, I mean, then there could be some issue about trying to do something else with it, it doesn't appear that there's any other logical thing to do other than try to make that work or tear it down. What do you have when you tear it down?

President Musgrave: Well, I think somebody who wanted to live in the house and had several vehicles to store, this would be absolutely perfect for that.

Bev Behme: That would take a commercial zoning for that.

President Musgrave: For a three car garage?

Bev Behme: Yes.

Commissioner Nix: Free standing?

Bev Behme: For a commercial vehicle storage—

President Musgrave: No, I was just talking about personal vehicles.

Bev Behme: Well, that's the same thing. It's the same thing. It would still require commercial, it's a commercial storage area.

President Musgrave: So, the houses we see around the county with more than two car garages—

Bev Behme: No, if they're on the same lot, if they're attached, that's one thing—

President Musgrave: Right.

Bev Behme: —but this is separated now. So, it really has lost all residential flavor it had.

Commissioner Nix: This, it sits on it's own lot?

Bev Behme: Now.

Commissioner Nix: Now?

Bev Behme: I mean, I don't think it was legally separated, but it is now, after all the use that was there.

Commissioner Shetler: So, this is a classic dilemma?

Bev Behme: Yeah.

Commissioner Shetler: I mean, this boils down to the fact that really we leave the gentleman with really no alternatives, no practical alternatives but to perhaps tear it down, which, you know, I'm not sure what purpose that would be. So, we are looking at a situation here that it could either become a serious eyesore if it's left to deteriorate.

Bev Behme: That's possible.

Commissioner Shetler: Or, we, you know, do something that the remedy may not be perfect, but it certainly resolves a certain amount of problem that's at hand anyway. So, it's really confined. I mean, he can do nothing else with it—

Bev Behme: No.

Commissioner Shetler: —but specifically to that one specific—

Bev Behme: Exactly.

Commissioner Shetler: —area.

President Musgrave: I have a question for Mr. Hazelwood or Mr. Shively, someone, somewhere told me that you actually are an attorney or that you were at one time,

is that accurate?

Les Shively: He was land man. He (Inaudible. Microphone cutting out.) He worked for the coal companies, acquired land and such.

President Musgrave: Was he an attorney?

Les Shively: Yes.

Hugh Hazelwood: Yes, I was admitted to the bar.

President Musgrave: So, he was admitted to the bar at the time that he transferred the—

Les Shively: Well, Madam President, I'm an attorney practicing law, but I'll tell you one thing right now, I wouldn't try to patent something, I wouldn't try to get a copyright, that's beyond my area. Zoning is a very specific, unique area, even for people who do real estate. I get a lot of referrals from real estate lawyers that do title work, because they don't know the first thing, with all due respect, regarding zoning and land use. That's a very unique area in and of itself. So, I can see how a practitioner may not be aware of all the nuances.

President Musgrave: Let me make sure I've asked for all of the remonstrators who may be present wishing to speak. It appears that we have heard from all of them. So, I'll ask for your summation, Mr. Shively.

Les Shively: Again, there's only one particular use that can go here. This is not really, it's a C-4 with a use and development commitment. This is not a carte blanche C-4. The reality of the fact is, that for 71 years this property has never been residential, it's been some kind of commercial or public use. Again, had, the time the fire station went in in 1982, there's certain things that could have been done that would have allowed that legal, non-conforming to be perpetuated, which would have had no restrictions on commercial. Let me tell you what legal, non-conforming is, the United States Supreme Court held a long, long time ago when communities started doing zoning, that if a use was previously established legally, I think back before zoning the only thing you had were building permits, was established legally and the use in there was a legal use, it wasn't some type of nefarious activity, it could continue in that classification, unless something would trigger it by changing the use, or what have you. So, that was the thinking back in those days. Another point, and curious enough, Mr. Roberts brought this out in his comments, although, I don't really think you can show how this could in any way, shape or form affect the wonderful work going on out there at Angel Mounds, but he talked about standing water. If you'll recall Ms. Behme's report to you a moment ago, even if you would approve this this evening, before this tenant can go in there, this is a change in use which requires him to go to site review. Bev, you interrupt me anytime if I'm stating something wrong here, they're going to have to show the site plan. If there are concerns about water and surface water, they're going to have to address those. So, this is an opportunity, if standing water is a problem here, although that little piece of property can't, I don't think it's creating a major problem out there, but for what it's worth, there's an opportunity to deal with that issue. Again, and this is not a traffic generator, I would note that as well. This is a compromise that takes into consideration all of the concerns, allows this property to be productive, allows Mr. Hazelwood to continue the use of this property. It's a win-win for everyone. As you can, there have been no adjacent neighbors that are upset with this. Abandoning

this property and allowing it just to deteriorate would not be in the best interest of anyone. We would ask for you favorable action here this evening to approve this with the use and development commitment. Thank you.

President Musgrave: We've heard the testimony, remonstrators, I believe it's customary to ask for a motion to approve a rezoning, and then if you are not in favor to vote against. That makes the record clear what the intention of the motion was. So, I will ask for a motion at this time.

Commissioner Shetler: So moved.

Commissioner Nix: Second.

President Musgrave: Alright, we have a motion to approve. All those in favor?

Commissioner Shetler: Aye.

Commissioner Nix: Aye.

President Musgrave: Opposed? And I am opposed. So, show it two to one approved. If there are not further matters?

Bev Behme: Are you going to have a roll call?

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote no. So, if there are no further matters to be brought under the Area Plan portion of the meeting. I show it adjourned, and we move to drainage board.

(The meeting was adjourned at 3:50 p.m.)

**Those in Attendance:**

Cheryl Musgrave

Kathryn Schymik

Les Shively

Mike Roberts

Bill Nix

Madelyn Grayson

Bobby Dancy

Others Unidentified

Tom Shetler, Jr.

Bev Behme

Hugh Hazelwood

Members of Media

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl A.W. Musgrave, President**

---

**Bill Nix, Vice President**

---

**Tom Shetler, Jr., Member**

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY  
REZONING BOARD  
OCTOBER 17, 2006**

The Vanderburgh County Rezoning Board met in session this 17<sup>th</sup> day of October, 2006 at 4:07 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: We are now at the rezoning portion of our agenda, we will start with the presentation done by Bev Behme of the items brought forward.

**Approval of the September 26, 2006 Rezoning Meeting Minutes**

Bev Behme: Good afternoon, Commissioners. We have no first readings, so all we'll need is to approve the minutes.

President Musgrave: Motion to approve the minutes, what date was that?

Bev Behme: September 26, 2006.

President Musgrave: September 26<sup>th</sup>.

Commissioner Shetler: So moved.

Commissioner Nix: Second.

Bev Behme: Final reading...do you want to?

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: The motion carries.

**Final Readings: VC-13-2006: Petitioner: Robert C. & Angela Schockman  
Address: 3910 N. Burkhardt Road  
Request: Change from AG to C-4  
Action: Approved 3-0**

Bev Behme: Are we ready? Final reading is VC-13-2006, Robert and Angela Schockman are requesting to rezone their property at 3910 North Burkhardt Road from agricultural to C-4. This is a 5.5 acre site on the northwest corner of Burkhardt and Lynch Roads. This site has frontage along Burkhardt and Lynch Roads. Evansville Metropolitan Planning Organization recommends one commercial access point for this site along the Burkhardt Road frontage, directly across from the retail access for Combs Landscaping. County Engineer, John Stoll states, "Access rights were purchased by Vanderburgh County along the following dimensions of the property, 88.51 feet, 26.54 feet, and 88.47. As a result, no driveways will be allowed at these locations. The only location where access will be possible for this parcel is the 203.35 frontage on Burkhardt Road. Depending on the type of land use that is developed on this property, improvements to Burkhardt Road could be necessary. Any required improvements would have to be done at the developers expense." This is a request to rezone 5.5 acres at the northwest corner of Burkhardt and Lynch

to C-4 to allow establishment of general commercial use on the site. If developed for commercial use, minimum green space buffers must be provided and maintained. Thoroughfare setbacks exist on both Burkhardt Road and Lynch Road. Setbacks are measured from the center of the existing streets. Burkhardt Road at this location has a 60 foot thoroughfare setback, and Lynch Road has a 70 foot. No buildings or other permanent structures may be constructed within the thoroughfare setback. This site at the northwest corner of Burkhardt and Lynch is projected as commercial on the future land use map in the comprehensive plan. This rezoning to commercial is consistent with the comprehensive plan. To date, most commercial use has been limited to the east side of Burkhardt Road. Land adjacent north, south and east remain agricultural and residential. Information submitted as part of this petition indicates that all utilities are available to this site, except sewers. This site is currently served by a septic system. Commercial development should be served by sewers. Area Plan Commission on October 12<sup>th</sup> voted nine affirmative votes and one abstention for VC13-2006.

President Musgrave: Thank you. Is the attorney here to present the petitioners case? Mr. Les Shively.

Les Shively: Madam President, members of the County Commission, I'm representing Mr. and Mrs. Schockman. Yes, there we go, that's the photograph I think shows a little more update, it shows Lynch Road going all the way through. I really don't have much to add to the staff report, a pretty thorough report. Just a little bit of background. This property has been in Mrs. Schockman's family for a number of years, the Folz family, and they now desire to avail themselves of converting it to a commercial classification. The reason they are doing it at this particular point in time, this property is listed with Mike Richardson, he's a commercial broker, Mr. Richardson had suggested that this property would sell better, and prospects would be more readily available if the zoning issue was resolved, rezoned to C-4, which is consistent with the commercial classifications in that area. In fact, immediately across Burkhardt Road, on the east side, excuse me, yeah, on the, actually on the north side of I-64, but right across on Burkhardt Road is Combs Landscaping. That is an M-1 classification. Of course, you can see all the other commercial that's located southeast of there. In communications with Mr. Stoll, we understand the access rights that were acquired, we understand what will have to be done for access, and we take no exception with those, we understand that, and we'll have to comply with those requirements. Again, Mr. and Mrs. Schockman are here. This received a favorable recommendation from the Plan Commission, and we would ask for your favorable vote this evening so we can move forward to market this property and make it productive.

President Musgrave: Thank you, Mr. Shively. Are there any remonstrators who wish to appear at this time? I see no remonstrators. Are there any questions from the Commissioners?

Commissioner Shetler: I do. I don't know if you can answer this question or not, Mr. Shively, but the sewers stop where? Apparently, they don't have sewer service, so, it's—

Unidentified: Combs.

Les Shively: Combs? Yeah, Combs, that's what I thought. Combs right across the street.



Commissioner Shetler: Okay, so they do—

Les Shively: Across Burkhardt—

Commissioner Shetler: So, they have, they can have access to it?

Les Shively: Yes, sir. Yes, I mean, they're not technically to the site. You would have to extend it to the west across Burkhardt Road.

Commissioner Shetler: Right. Okay.

Les Shively: So, it's not like you have a lot of off site work, but a little bit of off site work.

Commissioner Shetler: Alright, thank you.

Les Shively: I'm not quite sure where the connecting point of the manhole is located, but I don't think it's going to be that prohibitive, and for a five acre tract like this, that's just, extending the sewer is part of the development cost that will have to be done.

Commissioner Shetler: Right. Okay.

President Musgrave: Are there any other questions? Do you have a summation you would like to—

Les Shively: No, just more than happy to answer any questions you might have.

President Musgrave: Is there a motion to approve?

Commissioner Shetler: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: I'll do a roll call vote. Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes. Show the rezoning to be granted.

Les Shively: Thank you.

Commissioner Nix: That will be the first time he's had no summation. I'm proud of you.

**Final Reading: VC-14-2006: Petitioner: PAMS, LLC**  
**Address: 4905 Pollack Avenue**  
**Request: Change from AG to C-4 with UDC**  
**Action: Approved 3-0**

President Musgrave: We move now to docket VC-14-2006.

Bev Behme: Yes, PAMS, LLC is requesting to rezone a part of their property located at 4905 Pollack Avenue, from agricultural to C-4 with a use and development commitment. This proposed .78 acre of C-4 located between Pollack Avenue and Earl Avenue, just east of Green River Road. There is an existing access drive on Pollack Avenue which serves as access for the mini-storage facilities on this site. The smaller 30 X 75 expansion parcel is an existing paved access drive around the rear of the existing mini-storage buildings. The .73 acre expansion site south and east of the mini-storage structures will be required to access through existing drives, as no frontage is available on the expansion site. All parking and drives must be paved. Site review will address compliance with access and traffic flow upon submission of plans for the development of the expansion area site. The 1.6 acre mini-storage facility adjacent west of this site was rezoned to C-4 in 1993, and six mini-storage warehouses have been constructed on the site. This is a request to rezone an additional .76 acre site for expansion of the mini-storage facility use. A use and development commitment is part of this rezoning petition, which identifies the only use requiring the C-4 classification that is to be permitted on the site, a mini-storage facility, with an office and a conference room. The future land use map of the comprehensive plan indicates a commercial node at the Pollack Avenue-Green River Road intersection. When the adjacent mini-storage facility was rezoned to C-4 in 1993, the commercial node was expanded east to include this site. These two proposed C-4 sites are intended for expansion of the existing mini-storage facilities. Surrounding areas to the north, east and south are predominantly single family homes. If approved for commercial expansion, the minimum ten foot open and unobstructed green buffer area must be maintained around the perimeter of the site abutting residential development. Area Plan Commission on October 12<sup>th</sup> voted nine affirmative votes and one abstention for VC-14-2006.

President Musgrave: Is there, Mr. Shively, you're presenting again?

Les Shively: Madam President, members of the Board of Commissioners, I'm here on behalf of the petitioner, PAMS, LLC, which stands for Pollack Avenue Mini Storage. Also here on behalf of PAMS is Mr. Tim Major, the principal managing member of that limited liability company. Again, the staff did an excellent job of hitting all the high points. Yes, that's the photograph I think that shows it better. You see the existing buildings, the solid white line is what we're rezoning. The mini-storage facility has been there for approximately 13 years, we're just expanding in that area, we want to rezone. Same setup, same layout, no new access. We will use the existing access. Again, this will allow this to expand, this facility to expand. That will be the only commercial use, along with the offices for Mr. Major's business. That's basically it. I would be more than happy to answer any questions.

Ted C. Ziemer, Jr.: Les?

Les Shively: Yes, sir?

Ted C. Ziemer, Jr.: Just one question. We have the original copy of the ordinance, should this be approved. It has attached to it the use and development commitment, which is not signed or notarized.

Les Shively: Okay, we will have that signed and notarized before it's recorded.

Ted C. Ziemer, Jr.: Okay.

President Musgrave: Are there any remonstrators who care to address the Commission on this rezoning? I see no remonstrators. Are there any questions from the Commissioners?

Commissioner Shetler: Just one. Les, is it the intention then to build a couple of extra storage buildings, is that what I had understood?

Les Shively: Right.

Commissioner Shetler: Okay, so, it's not to expand the parking area there for the RV's or that kind of storage outside storage?

Les Shively: We'll be building buildings.

Commissioner Shetler: Okay, how many buildings are we looking at?

Les Shively: Tim, how many buildings, just one? Just one building. It's only .78 acres. By the time we do our green space and our setbacks and everything.

Commissioner Shetler: I noticed that part of that is chat or whatever, is the intention to put asphalt or a hard surface?

Les Shively: We'll have to. As you can see from the aerial there, where the buildings are currently are all paved, and we'll have to do likewise when we put the buildings in.

Commissioner Shetler: Okay, thank you.

President Musgrave: The entire area might not be paved, just the part that's supporting the building?

Les Shively: Well, it will look very similar—

President Musgrave: Okay.

Les Shively: —to what you see there, because it's just carrying the theme a little bit further to the east.

President Musgrave: Alright. Is there a summation, Mr. Shively?

Les Shively: No.

President Musgrave: Is there a motion to approve?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes. Show the rezoning as granted.

Madelyn Grayson: Mr. Shively, I am a notary. If Mr. Major wants to sign that now, I can take care of that.

President Musgrave: Please go ahead and approach, and we'll move on to VC-16-2006.

**Final Reading: VC-16-2006: Petitioner: Elite Development Group LLC**  
**Address: 1034 Beacon Hill**  
**Request: Change from AG to C-2**  
**Action: Approved 3-0**

Bev Behme: VC-16-2006, 1034 Beacon Hill. Elite Development Group is requesting to change in zoning of a .36 acre strip of their golf course from agricultural to C-2. The parcel at 1034 Beacon Hill is located north of Beacon Hill between Cambridge Village and South Hampton Drives. Site review and sub review committees will address compliance with all code requirements upon submission of plans for the development of the proposed town home, multi-family dwellings on the site. The rezoning of this small strip of golf course land to C-2 to enlarge the existing C-2 lot should have little effect on traffic. Site review will address access upon submissions of plans for the development of this site. In 1998 Cambridge Subdivision was approved by the Area Plan Commission. The area was rezoned in November, 1999 to facilitate the overall development plans for Cambridge Village golfing community. A combination of low and high density residential development, a golf course, and commercial, retail and recreational development. In addition to the single family residential subdivision, and the golf course, the rezoning of the Cambridge development included 22 acres of R-3, and 6.76 acres of C-2. This rezoning is a request to rezone an additional .36 acres of the golf course land to C-2, increasing the size of an existing commercial lot. The C-2 zone site allows the flexibility to develop as either commercial or multi-family residential use, a use not permitted within the existing agricultural classification. The area adjacent south and southeast of this site is commercial, and north and northwest is the golf course and residential. This request to rezone a .36 acre strip of ground contiguous to the existing C-2 is to allow multi-family residential development, a use prohibited within the agricultural classification. This rezoning to C-2 is consistent with the adjacent zoning and with the overall development plan for the area. Area Plan Commission on October 12<sup>th</sup> voted eight affirmative and one abstention for VC-16-2006.

President Musgrave: Is there anyone here to present the case? Please state your name.

Keith Poff: Keith Poff with Sitecon, Incorporated, representing the petitioners in this rezoning. They're asking for the rezoning in order to add a strip of C-2 to make it available for the proposed multi-family project that is interested in building in the north half of this lot. We currently also have a subdivision plat that has been through primary approval, it's referred to as Cambridge Overlook. The northern portion of the property is set aside for that residential project. If the footprint of the buildings, or any of the use of the multi-family would go into this area, then it needs to be zoned C-2.

President Musgrave: Thank you. Are there any remonstrators to speak to this? I see no one. Are there any questions by the Commissioners?

Commissioner Shetler: Not really a question of the petitioner, but, I guess, maybe of Beverly. That's why C-2 versus like R-3 or R-4 or something?

Keith Poff: If I may? The rest of the lot was zoned C-2 years ago without a use or development or anything specific. They had intentions of putting some retail and combination uses there, but they haven't materialized at this point. The C-2 was the matching designation for the rest of the property.

Commissioner Shetler: But, the intent for the development now is multi-family?

Keith Poff: Yes.

Commissioner Shetler: There is no intent to put any kind of shops?

Keith Poff: Not on this location here, no. My clients are the landowners, and they have been approached by a residential, multi-family project developer, who wants that northern piece.

Commissioner Shetler: Okay.

Keith Poff: We've gone through the subdivision project for that same effect.

Commissioner Shetler: Alright, thank you.

President Musgrave: Any other questions? Do you have a summation?

Keith Poff: I'm afraid not.

President Musgrave: Ms. Behme, did you have something you wanted to add?

Bev Behme: I just wanted to add that C-2 would allow both. If they're not clear at this time which one they wanted to have.

President Musgrave: Is there a motion to approve?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries. I'm sorry. Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Shetler?

Commissioner Shetler: Yes.

President Musgrave: And I vote yes. Show the rezoning as approved. If there's no other business on the agenda, I would like to say one other thing before we get that motion to adjourn. I want to thank you, Commissioner Nix, for your leadership in getting the overhead projector and the computer in here. It is so much clearer, and I know that you had to expend some energy on that project.

Commissioner Nix: We got it done, that's the main thing.

President Musgrave: Is there a motion to adjourn?

Commissioner Nix: So moved.

Commissioner Shetler: Second.

President Musgrave: All those in favor?

Commissioners: Aye.

President Musgrave: We are adjourned.

(The meeting was adjourned at 4:25 p.m.)

**Those in attendance:**

Cheryl Musgrave  
Ted C. Ziemer, Jr.  
Les Shively  
Members of Media

Bill Nix  
Madelyn Grayson  
Keith Poff

Tom Shetler, Jr.  
Bev Behme  
Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl A.W. Musgrave, President**

---

**Bill Nix, Vice President**

---

**Tom Shetler, Jr., Member**

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY  
REZONING BOARD  
NOVEMBER 21, 2006**

The Vanderburgh County Rezoning Board met in session this 21<sup>st</sup> day of November, 2006 at 4:25 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: Now to the rezoning portion, and Mr. Brad Mills from Area Plan is here. Do we have rezoning minutes to approve?

**Approval of the October 17, 2006 Rezoning Meeting Minutes**

Madelyn Grayson: Yes, we do. They are from October 17<sup>th</sup>, I believe.

President Musgrave: Is there a motion to approve those?

Commissioner Nix: So moved.

President Musgrave: And, I'll second. All those in favor?

Commissioner Nix: Aye.

President Musgrave: Aye. The motion carries.

**First Reading: VC-1-2007: Petitioner: Spurling Development LLC  
Address: 5103 Spring Valley Drive  
Request: Change from AG and C-4 to C-2**

President Musgrave: First reading on the agenda tonight, Mr. Mills?

Brad Mills: You just did minutes? Is that correct, approval? First reading tonight is docket number VC-1-2007, the petitioner is Spurling Development LLC, the address is 5103 Spring Valley Drive, and the nature of the case is a change from agricultural and C-4 zone to a C-2 zone. That was all for first readings.

Madelyn Grayson: Do you need an agenda?

President Musgrave: Yes, I do. Well, no, I have the agenda, what I don't have is my own agenda, and I see Marissa is not here today. Alright, so, the first one on the docket is Spurling Development, correct?

Brad Mills: Yes, that was the first reading that I just—

President Musgrave: And, you need a motion to approve it on first reading, is that correct?

Brad Mills: Yes, please.

President Musgrave: Is there a motion?

Commissioner Nix: So moved.



President Musgrave: I will second. All those in favor?

Commissioner Nix: Aye.

President Musgrave: Aye. That motion carries.

**Final Reading: VC-15-2006: Petitioner: Broadway Summit LLC  
Address: 2708 North Green River Road  
Request: Change from AG to C-4 with UDC  
Action: Approved 2-0**

President Musgrave: So, we move now to final reading, the Broadway Summit LLC, go ahead please.

Brad Mills: Alright, the final item is docket number VC-15-2006, Broadway Summit is requesting to change the zoning of their property located at 2708 North Green River Road from agricultural to C-4 with a use and development commitment. This is a 66.26 acre site located on the west side of Green River Road, between Theater Drive and Spring Valley Road. This petition was continued at last month's meeting to allow correction and amendment of the use and development commitment. The new commitment was included with the staff field report. Evansville MPO states that access directly to Green River Road should be limited to two access points, and internal access should be provided by a frontage road. A traffic impact study is warranted by the MPO's access management manual. It should be used to determine if any off-site improvements are warranted. County Engineer, John Stoll's comments are, "Number one, this development must connect to and complete the frontage roads planned in the development on the north and south boundaries of this site. Number two, road improvements other than a traffic signal may be required given the size of the site. A detailed traffic study could be necessary to determine what improvements are needed." Subdivision review committee reviewed the primary plat of Stonefield Park Subdivision, a 12 lot commercial subdivision at their meeting on September 12, 2006. The subdivision is designed to comply with the standard for commercial development, and approval of the subdivision plat was continued until the December Area Plan Commission hearing to allow approval of rezoning prior to hearing of the commercial subdivision plat. Site review committee will address compliance with all code requirements upon submission of plans for the development of the site. A portion of this site is within an area designated as commercial on the comprehensive plan future land use map. Adjacent to the south is an area of mixed commercial and high density residential proposed for development as Theater Commons Subdivision, and an apartment community. North is Mystic Creek commercial subdivision and a proposed high density residential planned unit development. Across Green River Road, east of this site, is mixed commercial and Sugar Mill Creek apartments. Adjacent west of this site is single family residential development. The Area Plan Commission on November 9<sup>th</sup> voted a no recommendation to the County Commissioners, with six voting affirmative, one negative and one abstention. As you know, it takes seven votes to send a recommendation to the Commissioners. That's all.

President Musgrave: Thank you. Mr. Shively, are you here to represent the petitioner? No? You are, sir? Please come forward.

Chris Wischer: Good evening. Chris Wischer, Bamberger Foreman Oswald and Hahn. I'm here on behalf of Broadway Summit. The members of Broadway Summit

are Jim Vincent, who's here with me, and Keith Hinderliter who's not. Dave True from Landmark is here as the engineer on the project. This property, I'll try not to repeat too much of what Mr. Mills already has said in his summary of this project. It is at 2708 Green River Road, at least that's the address we've given to it, for about 66 acres of property there on Green River Road north of Theater Drive. The area is, you can see on the western boundary there's a pretty, fairly large single family residential subdivision. To the north is Mystic Creek, which is a newly zoned, I guess, in the process of development, commercial and PUD development. To the south, on Theater Drive is a property that's been recently zoned and is in the process of being developed to commercial and residential by Spurling Development. Then on the other side of Green River Road there's a large apartment complex and some other commercially zoned properties. We've also filed a subdivision plat, which I think was overlaid on the, you have one that overlays the subdivision plat. We filed a proposed subdivision plat at the same time we filed the zoning, that has been reviewed, but is on hold and will go through the subdivision process following, assuming the, you know, under the assumption that it would be approved, then would proceed next month to the Plan Commission. But, you can see we have, I think, 12 lots of commercial development, some frontage out lots and then some larger lots on the rear of the property. Excuse me, I'm a little under the weather today, and I'm not thinking as fast as I normally do. I'm not sure how fast I think normally, but. The access to the property will be, there will be access directly to Green River Road in likely two places. There will be a frontage road, you can see running between the out lots and the larger lots, and those will access frontage roads that will be, that are proposed within the Spurling Development and the Mystic Creek development. There will be no direct access to the rear of the property, obviously, through the residential subdivision. With this zoning we are asking for a C-4 zoning classification, but we have filed a use and development commitment with that request. I would like to take a few moments to go through that use and development commitment with you. First, let me say that this is the, you'll see that, the one you have should say amended use and development commitment. We had previously gone to the Area Plan Commission, and it was pointed out during that meeting that there was some language issues, or clarification that could be had to some of the language. So, we worked pretty diligently following that meeting. We postponed the matter and made some significant language revisions to the UDC to tighten it up. The other issue that came up at that original Plan Commission meeting was in relation to some buffers on the north and south boundary, which I'll get to in a minute, but, as a result of those meetings we made some changes, and that's what you have today. So, I want to make sure that you have the right one in front of you. Going through the UDC, as you know, with commercial zoning, there's quite a few commercial uses that are allowed within a commercial C-4 zoning, and Broadway Summit has agreed in that commitment to reduce and eliminate some of what we would call the more intense border line industrial type uses, or uses that would not be generally acceptable to our residential neighbors. We are very cognizant, in putting this together, of the residential subdivision to the rear. Those folks have been there for, you know, 30 or more years, and they're single family houses. I think there's more than 20 that actually abut the property. So, we felt it very important to consider those when preparing this UDC. In addition, there's some restrictions on lighting and signage. The lights will not be directed towards the residential adjoiners, and the signage will be shielded from visibility from those residential adjoiners. We've got some restrictions on trash, I guess, disposal and use, and where it will be stored, and dumpsters that will be properly screened architecturally. We have, we are creating a requirement for a buffer along the western boundary, again in an attempt to kind of proactively alleviate what our anticipated concerns would have been from those folks along the western boundary. You know, when you're going

to bring a high retail commercial use, it's going to cause those folks to be rightfully concerned, and we really went out of our way, I think, to alleviate those concerns. We've required a 50 foot setback along that boundary, with a seven foot berm that would be landscaped, and that landscaping would have to take place within one year of construction of the berm, and a five foot opaque fence on top of that berm, the length of that property. Later on in the UDC there's a provision for maintenance and construction of that berm and fence. What it says, and this came as a result of the original APC meeting, it makes it clear that no, none of those single lots could be utilized and constructed upon until the berm required to be constructed within that particular lot was finished. That way, there was some concern expressed that we would begin the berm at one end and go build on the other end. So, essentially, that's going to make sure that the berm's in place, at least for that particular lot. This will probably be developed in phases, so, it doesn't necessarily make sense to construct the entire berm. So, this will allow that berm to be phased in as construction takes place. There's also provisions in there for a northern and southern buffer, and if you'll allow me, I will address that at the end of my presentation. There's also restrictions on temporary structures and a commitment to put a traffic light in should that be deemed necessary in the site review process. So, we go through site and subdivision review, if a traffic light is deemed necessary, it would be the commitment of the petitioner to make that installation. I do want to talk again for a minute about the adjoiners on the west, because, again, when we got this petition, we were thinking through this petition, in light of some of the past issues with, an example, the Target development in the city, and other commercial developments, you know, residents, people who own their homes along those potential developments do get concerned. So, we had a meeting after we filed the petition at the Black Buggy in September, invited all of those folks, and quite a few came out. We went through the entire proposal with those folks, asked for comments, the big concern we heard in that meeting was drainage, apparently particularly on the southern end of our development there's some real drainage issues. A lot of that probably comes with the fact that ours is farmland, and really, I think, it's higher than those folks, so, the water really has nowhere to go but on their properties. We've been working with our engineers, as you know, the drainage code requires that we do nothing on our property to make their drainage situation worse than it already is, but we're actually trying to take steps to make it better, to identify, we think the berm that we put there will have an impact on that. We, those particular residences are actually located in the city, and I understand that our client had Pat Keepes out there this week to look at the drainage situation, and we've been working with the county folks as well, and are hopeful that we'll come up with something that will actually make things better than they are now. With regard to the properties to the north and the south. As I said, when we first got this zoning petition and were putting it together, our main focus was with those single family residences, again, they've been there 30 years. They have properties, they're not one developer who can take, you know, collectively take care of themselves, they are 20 or more people, or 40 or more people, or even more depending on the size of the households. So, we really went out of our way, and I think as you can see, I'm not sure if any, some of those folks are here tonight, but I would be surprised if there's any real concern, because I think we've talked a lot with them, we've met with them, and we've dealt with those problems. With regard to the north and south, both Mr. Spurling and Mr. Tubbs came to the original APC meeting and the second APC meeting and expressed a desire that they be treated similarly to the folks on the west. We think there's some real distinctions, but we committed in our second use and development commitment to work with them to come up with an agreement to address their concerns on the buffer. We have, I can report to you tonight, in the hallway, worked out a, what, I guess, would call a tentative agreement, since we've

not signed anything yet, on the buffer to the south with the Spurling folks, that would require the installation of a fence along the property line. The shared cost of the installation of that fence. So, Mr. Shively and I will put a covenant together, I suppose, here shortly after this meeting to address that issue. With regard to the property owner to the north, we've made a written proposal, much like we did with the Spurling's as to what we would agree to do on the north. Mr. Tubbs initially expressed that he would agree only to, only if he was treated exactly the same as the folks in the back. We had a meeting, my understanding is my client had a meeting scheduled yesterday with Mr. Tubbs, and that meeting did not take place. So, again, our commitment requires us to negotiate in good faith for a buffer for screening on the north boundary line, as well as the south. We've completed that with regard to the south, and we fully intend to discuss with Mr. Tubbs. There are some other issues, as you can expect when two developers adjoin each other, in their process of developing, there are issues outside of that, and we're talking about all of those things. In particular is where our roads are going to interconnect, and that will be addressed in the site review process, I'm sure. But, for purposes of today, I have to tell you, I'm not aware of too many places where we have required, or where there has been required particular buffers and screening between multi-family and commercial developments. I've seen it quite a bit with regard to single family. I'm not saying that I don't think it's, you know, an appropriate thing for the parties to agree on, but I think there may be some mutual costs that need to be shared with regard to that, and that's what we're trying to work toward. But, again, to stress, our commitment requires us to negotiate, and we intend to continue to do that with regard to the folks to the north. If there are any questions with regard to any of that, I would be happy to address those.

President Musgrave: I have no questions. Do you have any questions?

Commissioner Nix: I have none.

President Musgrave: At this point then, I will call for remonstrators. Are there any remonstrators for this petition? Mr. Shively?

Les Shively: Madam President, member of the Board of Commissioners, my name is Les Shively representing Spurling Properties. I wouldn't necessarily put us in terms of a remonstrator, per se. Mr. Wischer outlined the agreement that we have reached, reached about 30 minutes ago, in regards to the buffering of our property and the proposed C-2 property form ours. Just for the record, Mr. Wischer, if we could get some time I'll show you countless examples of where there's buffering between multi-family in this community and commercial. But, be that as it may, we are pleased with the agreement we have reached, just to make sure that we're clear here, and if I misstate this, I would like for Mr. Wischer to correct me, because we are withdrawing our remonstrance in reliance upon these representations. As you know, if a representation later turns to be false, that could be a basis within the statutory time period for this board to reconsider a rezoning that had been granted. We don't think that's going to happen, but we do want to make it clear that we are stepping down, so to speak, based upon those representations. Which Mr. Wischer has stated that they will, on that borderline area, we will share in the costs of an eight foot fence, which will be on the property line. It will be maintained by my clients, by Spurling. This is conditioned upon there being adequate area to go in there and do the maintenance, but I believe the ten foot setback requirements and green space requirements will provide that additional, that adequate area for those purposes. Since we do not have anything in writing today, and it's not in the use and development commitment, we were asking that that be reduced to writing within 60

days of today's meeting, so, we're going to do it in the form of a private covenant. Something that would be recordable between the parties. So, that's basically where we're coming from, and providing that is the agreement of the parties, we would show that we would stand down in turn of any opposition based upon those representations by the petitioner. Any questions by the Commissioners?

President Musgrave: No.

Les Shively: Thank you.

President Musgrave: I do have a question for our attorney or Mr. Mills, whichever is appropriate, this private covenant is enforceable by the parties and does not involve the government except insofar as this rezoning issue stated by Mr. Shively?

Ted C. Ziemer, Jr.: That's correct. When you say involves the government, it is actually between the parties. The only involvement of the government is that if you should approve this rezoning tonight based on that representation, then if that representation turns out not to be true, that could be cause for you to reconsider this.

President Musgrave: Just the rezoning portion of it though?

Ted C. Ziemer, Jr.: Right.

President Musgrave: Mr. Tubbs, did you care to also remonstrate?

Jack Tubbs: Jack Tubbs, Mystic Creek. I'm the developer to the north of the proposed Stonefield Park. I just want to go on record to say that I am for commercial development. I do not have a problem with the commercial development that Mr. Vincent's proposing, welcome it to the area. My concern has been two things, it's been buffer and it's been inner connectivity. Going through the process before, I understand the issue of inner connectivity is a site issue, and hopefully that's something we can work out, especially with us having our plat recorded where our easement is. My concern is still buffer. I've worked with Mr. Wischer before, I respect what he's saying. I'll acquiesce too, provided that we can work on some details on how we can buffer together, but right now what's been proposed is not acceptable to us. What's been proposed has been two row of pines, half on our side, half on Mr. Vincent's side with equal sharing of costs, equal sharing of maintenance. We have 40 condos we're going to be putting in. Each one is sale priced \$170,000 to \$180,000. A substantial investment on the development side, substantial investment from the individual homeowner side. Having commercial next door is going to be an amenity, but there has to be some type of a buffer. So, I'm looking forward to discussions, resolving this, and coming to conclusion here, hopefully, before the holidays start.

President Musgrave: Thank you. Right now they have a use and development commitment on record, and I'm asking you, Mr. Mills, that requires this two foot berm with the pine trees, isn't that accurate?

Brad Mills: For the north and the south, I believe it's just that they are going to negotiate between the two of them—

President Musgrave: Okay, that's fine.

Brad Mills: – and they'll resolve it, is that correct?

President Musgrave: Alright. Are there any questions?

Commissioner Nix: Mr. Shively?

Les Shively: Yes, Sir?

Commissioner Nix: I'm just curious, is this something that you think you can get done, what kind of time frame are you looking at between you and Mr. Wischer?

Les Shively: I've already done a rough draft today and sent it over to Chris. There's some, I know there's some changes that Chris will make to it, but I don't think we're going to need all that time, quite frankly. We want to get it done, like Mr. Tubbs said, before the holidays are over. We want to get it done, at least that soon, if not sooner. Yes, sir?

President Musgrave: Mr. Wischer, do you care to sum up?

Chris Wischer: I don't think we'll have any problem getting, excuse me, getting the agreement done within a reasonable amount of time. Like Les said, he's already provided us with a draft, and we've, you know, worked on some changes to that here tonight. So, we'll put something together and I'm sure, as we committed to do, we'll get that done. Then I appreciate Mr. Tubbs' comments, and we'll be getting with him as well. But, in a nutshell, I mean, this is property that, you know, out on Green River Road, it's hard to imagine zoning it anything other than something like what we're planning to do. We would ask that you approve it.

President Musgrave: Thank you. Are there any questions?

Madelyn Grayson: Commissioner Musgrave, I did have a question. The use and development commitment, is there someone authorized to sign that present tonight? Because it's not signed.

Chris Wischer: No, I will get that signed within the next week or so.

Madelyn Grayson: Okay.

Chris Wischer: As in the past, we, since we change them so often, you know, you don't want to have one signed floating around that actually gets recorded. But, no, not here tonight.

President Musgrave: Is there a motion?

Commissioner Nix: I move approval.

President Musgrave: And I will second. All those in favor? Aye.

Commissioner Nix: Aye.

President Musgrave: The motion carries.

Commissioner Nix: Does that take a roll call?

Chris Wischer: Thank you.

Commissioner Nix: Roll call? Does that take a roll call?

President Musgrave: Is that a roll call?

Ted C. Ziemer, Jr.: Yes.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: And I vote yes. Show the motion as passed. Thank you.

Madelyn Grayson: Chris, I will also need you to sign the redaction statement on the ordinance.

Commissioner Nix: Is that all the business?

President Musgrave: Yes.

Commissioner Nix: I will entertain a motion we adjourn. I will make a motion that we adjourn.

President Musgrave: You make it and I'll second it. All those in favor? Aye.

Commissioner Nix: Aye.

President Musgrave: Thank you.

Commissioner Nix: I forgot which hat I was wearing.

(The meeting was adjourned at 4:50 p.m.)

**Those in Attendance:**

Cheryl Musgrave

Ted C. Ziemer, Jr.

Les Shively

Members of Media

Bill Nix

Madelyn Grayson

Jack Tubbs

Brad Mills

Chris Wischer

Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

---

**Cheryl A.W. Musgrave, President**

---

**Bill Nix, Vice President**

Recorded and transcribed by Madelyn Grayson.